

COPY OF
JUDGMENT
IN WHAT IS KNOWN
AS
THE GROCERS' GUILD
CASE

THE RIGHTS OF MANUFACTURERS
WHOLESALEERS AND
RETAILERS

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April 15th, 1913.

NOTE.—This pamphlet contains a complete copy of the judgment of the Honourable Sir Glenholme Falconbridge, Chief Justice of the King's Bench in what is known as the

Grocers' Guild Case

This action was brought by the Crown against the Wholesale Grocers' Guild, an association having for its membership about ninety-five per cent. of the wholesale grocers of the Dominion.

The charge is set forth on page ten. The preliminary and High Court proceedings occupied twenty-four days, nineteen days of which were taken up by the prosecution and the balance by the defence. The expenses in defending this action were, in round figures \$12,000, a portion of which was contributed by voluntary contributions from a number of manufacturers, and the balance by the wholesale grocery trade of the Dominion. It is generally believed the expenses of the Crown in trying to succeed in their charge were upwards of \$8,000.00. Just why the action was brought against the wholesale grocery trade still remains a mystery—no consumer complained—no retailer complained.

The fairness of the Guild's methods were proved (see judgment, page 20.) The Crown went far afield in an effort to convict (see judgment page 16.)

That the position of the wholesale grocery trade of Canada was placed in its proper light before the Court is due to the splendid manner in which the case was prepared for trial by the Counsel for the defence.

Prior to the judgment in this case many peculiar and very often ridiculous ideas prevailed as to the rights of those engaged in business to protect their interests and, therefore, a careful perusal of the judgment will satisfy those in doubt.

In addition to the judgment, this pamphlet also contains two very important addresses given by Mr. E. F. B. Johnston, K. C., Toronto, counsel for the wholesale grocers, a gentleman who has undoubtedly the best informed legal mind on trade matters in the Dominion. The addresses deal with the Secret Commissions' Act and the rights of the trade and manufacturers. They are extremely comprehensive and appeal strongly to common sense.

The subject of competition has become a bugaboo to the Canadian and American nations. **Is competition unrestrained** the good thing which its popularity would make it appear to be ? The question is should **unrestrained, reckless competition be allowed where its reaction works actual harm ?**

It is a fallacy to believe that the public get the same value in or the same service from any given article which for any length of time is the object of ruthless cutting of its retail price, it being assumed that such price is a reasonable and fair one, which in the case of a fixed price is almost without exception the case.

The bad effect of price cutting does not stop with the retailer, but finds its way back to the jobber and to the manufacturer. The cutting of prices will not ensure to the retailer, jobber and maker, a fair profit, and open competition eventually works around to actual harm and loss to consumers. The case of unbridled competition is, therefore, a serious question and a uniform price can never, therefore, in its last analysis, be in the nature of restraint of trade to such a degree as to make it harmful. Uniform prices will never stifle competition, though they may curb ruinous competition. Manufacturers may still compete with one another though each may enforce a uniform price on his individual product. The public will always be the commercial court of last resort, for when a uniform price on any commodity is fixed too high, it will buy some other product of the same class at a lower cost.

This subject of trade and commerce is very clearly set forth in Mr. Johnston's addresses, which should be carefully perused by every business man in Canada.

The appointment of a trade commission, a tribunal absolutely removed from politics, has been suggested time and again to the members of the Dominion Government. This tribunal would be better able, after studying trade conditions, to give an intelligent report on the fallacy of ruinous competition, and such a commission would undoubtedly be of great benefit to all classes in the Dominion.

For extra copies address

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Drawer 289, Hamilton.

COPY OF JUDGMENT
OF
HON. SIR GLENHOLME FALCONBRIDGE, C. J.
IN WHAT IS KNOWN AS THE
GROCCERS' GUILD CASE

COMMENCED FEBRUARY 6th, 1906
JUDGMENT MARCH 7th, 1910

DOMINION OF CANADA }
PROVINCE OF ONTARIO } Court of OYER and TERMINER

R E X

VS.

B E C K E T T et al.

G. T. BLACKSTOCK, K. C., and }
S. F. WASHINGTON, K. C. } for the Crown.

E. F. B. JOHNSTON, K. C., }
E. H. AMBROSE, and }
E. N. ARMOUR, } for Defendants.

JUDGMENT OF

The Honourable Sir Glenholme Falconbridge

Chief Justice of the King's Bench.

March 7th, 1910.

This is a prosecution for an alleged conspiracy connected with trade and commerce, laid under Section 498 of the Code. The indictment was found by a grand jury at Hamilton before me at the autumn assizes of 1907. The persons and corporations against whom such indictment was found exercised the option given by Section 581 and elected to be tried before me without the intervention of a jury, and by consent the venue was changed to Toronto. Preliminary.

Partly owing to the fact that witnesses had to be brought from great distances and from the United States, and partly because regard was necessarily had to the other engagements of myself and counsel, the case was not immediately proceeded with, but it was tried on 21st September, 19th, 20th, 21st, 22nd, 23rd October, 11th and 12th November. The evidence was closed on the 7th January, 1909, and the argument at once proceeded and occupied three days (the 7th, 8th and 9th.) The evidence was then extended and copies made of certain exhibits, and after I Causes of delay.

become (some weeks later), finally seized of the case by the delivery to me of the papers necessary to complete the record, various circumstances of a personal nature from time to time interfered with my disposition of the case.

There are over 1,000 pages of typewritten evidence. The exhibits number 112; two of them being letter books from which hundreds of letters were read, and other individual exhibits, each comprising in several instances bundles of 30 or 40 letters and documents.

The
Indictment.

The indictment charges " That Henry C. Beckett, George E. Bristol, John I. Davidson, Thomas B. Escott, W. G. Craig, Jos. F. Eby and Thomas Kinnear, the Dominion Wholesale Grocers' Guild and the Ontario Wholesale Grocers' Guild, did in and during the years 1898, 1899, 1900, 1901, 1902, 1903, 1904 and 1905 at the City of Hamilton, in the County of Wentworth and elsewhere in the said Province unlawfully conspire, combine and agree and arrange one with the other and others of them and with "**** (some 208 named persons, firms and corporations), *** " and with the several members during the years aforesaid of such of the parties aforesaid as are firms or partnerships, and with the officers and directors during the years aforesaid of such as are corporations, and with the several officers and members of committees of the Dominion Wholesale Grocers' Guild, and of each of the Provincial Guilds during the years aforesaid and other persons, firms and corporations at present unknown :

One (1)—To unduly limit the facilities in producing, manufacturing, supplying and dealing in sugar, tobacco, starch, canned goods, salt, and cereals and other articles and commodities, being articles and commodities which are the subject of trade and commerce.

Two (2)—And to restrain and injure trade and commerce in relation to such articles and commodities.

Three (3)—And to unduly prevent, limit and lessen the manufacture and production of such articles and commodities.

Four (4)—And to unreasonably enhance the price of such articles and commodities.

Five (5)—And to unduly prevent and lessen competition in the production, manufacture, purchase, barter, sale and supply of such articles and commodities.

against the form of the Statute in such case made and provided and against the peace of our Lord the King."

Counsel for the Crown admitted that no case had been made out against the defendants under section one of the indictment corresponding to subsection (a) of sec. 498 of the Code (for unduly limiting facilities for transportation, production, etc.) and

that the case would have to be maintained, if at all, under the remaining charges corresponding to subsections (b), (c) and (d) of the said section.

I have, of course, always been seized of the principal features of the case, and having carefully considered the numerous authorities cited to me, and others, I have been for some time in a position to say that I had made up my mind and was prepared to render a general verdict, but I was anxious, in a case of so much importance, to give a very full and elaborate statement of the facts. But, as I have indicated above, every time that I thought I saw before me the two or three weeks necessary for that purpose, illness, or some other intimate disabling cause came in the way. I now realize that it is unfair to all parties concerned further to delay judgment, and I must give this, leaving the details to be filled in hereafter, if considered necessary or desirable.

Delay not
caused by
doubt as to
guilt of
defendants.

The history of the Guild has to be gathered from the evidence of defendants and the letters and documents. It appears that the Wholesale Grocers' Guild had its origin in the year 1883. Prior to the formation of any Association of Wholesale Grocers, the conditions of the trade in tobacco, starch and staple articles, sugar, canned goods and matters of that kind and cereals are proved to have been very unsatisfactory. The wholesale grocers were making a very small profit altogether and not even a living profit on staples. Price cutting was prevalent. Defendants claim that it was owing to the unfortunate and unsatisfactory conditions that existed that some steps had to be taken to preserve their existence in trade.

History of
the Guild.

The evils of which the wholesale grocers were complaining, and for which they sought a remedy, were that a great many lines of goods were being sold at a less price than they thought they ought to be, and business conditions were not fairly understood and enforced as the grocers thought they should be. It is sworn that the object of the Guild in seeing the manufacturers was to try and get, if possible, sufficient profit to deliver or market their goods without drawing upon the profits of other portions of the business.

The Guild's origin was due to the fact that conditions of the trade were very bad, and it was found necessary in order to prevent disaster amongst those engaged in wholesale business to meet and confer with a view of seeing what measures might be arrived at to improve such conditions.

Conditions
of trade
necessitated
information.

Mr. Kittson says that what gave rise to the guild was this,—the wholesale trade came together for the purpose of forming an Association for their mutual helpfulness—to educate each other as to the conditions of trade—to endeavor to promote legislation when necessary—for the purpose of consulting with regard to the standing of customers—for the general purpose of throwing

light on better methods of doing business—and to increase the profit, if possible.

Colonel Davidson states in his evidence that the origin of the Guild was about 1883, when Mr. Blain and he went east to Montreal to arrange a tobacco price.

Mr. Blain relates that Colonel Davidson and he went to Montreal with a view of discussing the situation of the trade on the question of tobacco, and on that occasion they succeeded in making an arrangement among the wholesale grocers to sell tobacco at an advance of two cents a pound. This arrangement was subsequently made between most of the wholesale grocers.

United
Action.

The next move was in the reduction of time terms given to the trade. Shortly afterwards they devoted their attention to the sugar business. This was the first time any united action had been taken by the wholesale grocers to see what could be done with the refiners. Negotiations with the refiners extended over three or four years, and finally resulted in the wholesalers getting a discount on the price which the refiners were charging, becoming able thereby to make a little profit on sales.

Mr. Blain further says that the bone of contention between the wholesalers and refiners was that the refiners could not afford the wholesalers a profit between the wholesale and retail trade, and the wholesalers' contention on the other hand was that they (the wholesalers), could not exist without it. The wholesalers contended that they could not sell the goods themselves for the profit they were getting. In short the wholesalers wanted more profit on sugar from the refiners; the price to the retail trade was to remain the same.

Mr. Blain says that the next move was further to reduce the terms on sugar to the retail trade. Sugar was reduced to thirty days and other goods gradually came to be put on a thirty day basis, but these negotiations extended over quite a series of years.

Colonel Davidson says that after his trip to Montreal with Mr. Blain, the wholesalers met occasionally and discussed matters, but for some time there was no regular constitution and no by-laws or anything of the kind.

The Guild
was at first a
"go-as-you-
please" affair.

Mr. Beckett in his evidence states that the organization was at first rather a "go-as-you-please" affair. There was no system about it and only a part of the wholesalers appear to have acted in the conference in the early stages. Some took no interest in the matter. The wholesale grocers had what they called a guild, but they did not even have a list of the members. No guild member could tell or knew who the other guild members were, and apparently they had no opportunity of knowing from any records or books of the so-called guild.

Mr. Blain says that the guild did not have many meetings during the presidency of Mr. Gillard, and that the guild was never organized upon what might be called a regular system until 1903. Mr. Gillard seems to have acted largely on his own responsibility, and he did not consult with or represent the guild officially.

No organization until 1903.

Mr. Beckett says that prior to 1903 there were no funds in the possession of the guild, and no membership fees—that Mr. Gillard or anyone else who was active in the guild's interests paid his own expenses and that the guild did not contribute anything towards them.

Colonel Davidson says that the Dominion Guild was the outcome of the local guilds, but they were not at that time called local guilds but local associations, and then afterwards provincial guilds were formed.

Mr. Cook says that the first and only by-laws of the guild were adopted on January 22nd, 1903. That the Dominion Guild consisted of nearly all the wholesale grocers in the Dominion. That there are also provincial and local associations. Each city where there are wholesale grocers has a guild, each province has a guild. By becoming a member of the local guilds, members also become eligible for the Dominion Guild. A member in good standing on the 31st December, 1902, of the local guilds was made a member of the Dominion Guild.

Mr. Blain says that the object of forming a constitution was to have a proper system of looking after the wholesale grocery business, and to have it properly organized. The condition of membership in the guild was that the applicant must be a wholesale grocer. The guild was formed for the purpose of giving to its members a reasonable profit for handling the trade in staple commodities of general consumption.

Colonel Davidson says that the guild was not formed for the purpose of enhancing the price to the retailer or consumer, but the guild had the reverse effect, that it has not destroyed competition nor enhanced the price of any article, but on the contrary it has reduced the price, and that there is no difference between the method of conducting business now under the guild, and as it was conducted thirty years ago, before any guild was thought of.

Guild not formed for the purpose of enhancing prices.

Mr. Beckett says that the guild was not formed at all for the purpose of regulating prices, that the method adopted was to prevent the demoralization of the trade continuing, and to remedy existing grievances.

Mr. Kittson says the guild simply endeavored to get the manufacturers to fix their price of their goods independently of the grocers, and the wholesale people then asked the manufacturer

to pay the wholesale grocer so much out of the price as his remuneration for handling the goods.

Mr. Cook in his evidence says that the loss of membership was the only penalty known in the Dominion Wholesale Grocers' Guild.

The history and proceedings of the guild are set out in the exhibits filed. They are too lengthy to be transcribed here, but if this case should come to be reported, some of them must be set forth.

Conspiracy under the common law considered.

This prosecution is under the Statute, but it is instructive to consider the Common Law on the subject, as defined by several leading cases and authorities:

"The doctrine that certain contracts are void as being in restraint of trade is founded upon considerations of public policy. According to a well-known dictum of Mr. Justice Burrough, 'PUBLIC POLICY IS A VERY UNRULY HORSE, AND WHEN ONCE YOU GET ASTRIDE IT YOU NEVER KNOW WHERE IT WILL CARRY YOU.'"

Exceptional insight into economic conditions necessary.

"To determine what is and what is not prejudicial to the interests of trade requires very exceptional insight into economic conditions and the nature of commercial transactions, and consequently, as the late Mr. Justice Cave once remarked, 'JUDGES ARE MORE TO BE TRUSTED AS INTERPRETERS OF THE LAW THAN AS EXPOUNDERS OF WHAT IS CALLED PUBLIC POLICY.'"

(Jolly on Contracts in Restraint of Trade, 2nd Edition, pages 1 and 2.)

Evolution in trade conditions requires corresponding change in laws.

In Nordenfeldt v. Nordenfeldt-Maxim (1894), A. C. 535, several very eminent Law Lords discussed the question of contracts in restraint of trade, and pointed out that :

"The course of policy pursued by any country in relation to or for promoting the interests of its commerce must, as time advances and its commerce thrives, undergo change and development from various causes which are altogether independent of the action of its courts."

(per Lord Watson at page 553) and Lord Ashbourne at page 556 says :

"The cases that have been referred to are interesting and important as showing the history, growth and development of an important branch of our Law. In considering them it is necessary to bear in mind the vast advances that have since the reign of Queen Elizabeth taken place in science, inventions, political institutions, commerce, and the intercourse of nations. Telegraphs, postal systems, railways, steam, have brought all parts of the world into touch. Communication has become easy, rapid and cheap. Commerce has grown with our growth, and trade is ever finding new outlets and methods that cannot be circumscribed by areas or narrowed by the municipal laws of any country. It is not surprising to note that our laws have been also expended, and that legal principles have been applied and developed so as to suit the exigencies of the age in which we live."

In the Ontario Salt Company v. Merchants Salt Company, 18 Gr. Ch. Rep. (1871), 540, that eminent judge, Strong, then Vice-Chancellor, delivered an elaborate judgment, the Bill having been demurred to for want of equity. The head note is as follows :

"Several incorporated companies and individuals, engaged in the manufacture and sale of salt, entered into an agreement whereby it was stipulated that the several parties agreed to combine and amalgamate under the name of 'The Canadian Salt Association,' for the purpose of successfully working the business of salt manufacturing, and to further develop and extend the same, and which provided that all parties to it should sell all salt manufactured by them through the trustees of the Association, and should sell none except through the trustees."

"Held on demurrer, that this agreement was not void as contrary to public policy, or as tending to a monopoly or being in undue restraint of trade; that it was not *ultra vires* of such of the contracting parties as were incorporated companies, but was such in its nature as the Court would enforce."

At page 542 he says :

"It is out of the question to say that the agreement which is the subject of this Bill had for its object the creation of a monopoly, inasmuch as it appears from the Bill that the plaintiffs and defendants are not the only persons engaged in the production of salt in this province, and therefore the trade in salt produced here by other persons, and in salt imported from abroad, will remain unaffected by the agreement, except in so far as prices may possibly be influenced by it. The objection on this head is rather that the agreement has for its object the raising the price of salt, and for that reason is illegal, as constituting the old Common Law offence of 'engrossing' or at least is void as being against public policy."

And on page 543 :

"Were I to hold this agreement void on any such ground, I should be laying down a rule, which if applied, would cause great inconvenience in trade, and one the necessity for which would at this day be discountenanced by all public and scientific opinion."

So that it would be dangerous to accept as a settled doctrine of political economy or proposition of law, that under any and all conditions, and at all times, every man or corporation should be declared to have an absolute and inalienable right to buy and sell, trade or barter, with any other person or corporation, without restriction as to quantity or price.

Sellers have
right to
impose
conditions.

The case of Rex v. Elliot (1905), 9 O. L. R., 648, has been strongly relied on by the Crown. There the defendant was president of, and took an active interest in the conduct of the affairs of the Ontario Coal Association. That Association was not formed so as to include a whole class. Dealers in Ontario could not become members of the Association as of right, and at least one applicant had been refused because the state of the coal business

"would not admit of additional competition."

The main object of the Association was to restrict and confine the sale of coal by retail to its own members, and to prevent

any one else from obtaining it for that purpose from the operators and shippers. Here the endeavor is to protect the interest and the welfare of the wholesale grocers of Canada, whether they are members of the Guild or not. Article 5 of the constitution of the Ontario Coal Association plainly contemplated the fixing of prices by the local organization so that in the two particulars that case is entirely different from the present one, viz.: the legitimate coal dealer could not get admission to the Coal Association, whereas here the Guilds have invited the membership of legitimate wholesale dealers from the beginning, and secondly, the price has in all cases here been fixed by the manufacturers themselves.

In the case of *Rex v. Master Plumbers' Association* (1907), 14 O. L. R., 295, persons in the trade who were not members of the Plumbers' and Steamfitters' Association could not buy supplies except at an advance of from 20 to 25 per cent., in other words men who were in the same position as the members, either could not buy at all, or if they could buy, could only do so at an advanced rate. On page 300 of his judgment in that case, Clute, J., says:

"We find that that system was endeavored to be rigidly carried out. Of course for the purpose here, it is not necessary that it should be shown that it was carried out or that it was put in force—the mere combination was sufficient; but as a matter of fact it was so enforced, and so rigidly enforced, that numbers of plumbers who were not members of the Association found it impossible to obtain goods except by a roundabout way through other members of the Association or by importing them from the United States."

And at page 302 :

"During all this time I find that the existence of this combination continued, that it was being observed as well as it could be under the circumstances, that both parties relied upon it, and that while making a pretence, for use at Ottawa, that they were selling to everyone equally, as a matter of fact the very firms that were engaged in this business, and who formed the Association of plumbers' supplies, were refusing applications of persons who sought to purchase their goods because they were not members of the Plumbers' Association."

And then an ingenious scheme was devised whereby through the medium of a Supply Association it was thought that the scheme could be carried out without danger.

In the present case any wholesale merchant could buy exactly on the same terms as members of the Association. I note on page 309 an observation of Osler, J. A., which applies to some of the evidence given in this case :

"The prosecution, however, went very far afield, introducing evidence, which comprises the bulk of the record, of unlawful acts committed by individuals, members of the old unincorporated Associations, years before these defendants came in to existence. This, in my opinion, was absolutely wrong."

This remark applies very specially to the indiscretions of some

individuals, notably of the late Mr. Gillard, who was badly afflicted with *cacoethes scribendi* and defendant Beckett has more than a slight attack of the same malady. In this connection I may cite the extremely fair and reasonable pronouncement of the senior Counsel for the prosecution.

"I apprehend that I am within the judgment of your Lordship in saying that if these arrangements as we have them exposed in evidence now, were on the whole reasonable, satisfactory and free in the main from objectionable features, that your Lordship would not think it fair or reasonable that these defendants should be pursued into some details of their conduct, which seems perhaps more or less objectionable, but after all said and done which are perhaps out of harmony with the general idea which they have in their mind."

Methods of
the Guild
were
reasonable.

And again:

"Now, my Lord, I shall only conclude as I commenced, by saying that if your Lordship reaches the conclusion on this evidence that the general arrangements made by these defendants are, on the whole, free from objection, informed by a proper spirit, conceived with proper idea, and aimed at the accomplishment of proper results, then on the part of the Crown I should not desire to see some details of their conduct which are objectionable fastened upon for the purpose of finding them guilty of the charges that are preferred against them."

In the *Mogul S. S. Co. v. McGregor, Gow & Co.*, 1892, A. C. Lord Halsbury says at page 36 :

It is not
unlawful to
protect
one's trade.

"There are doubtless to be found phrases in the evidence which, taken by themselves, might be supposed to mean that the associated traders were actuated by a desire to inflict malicious injury upon their rivals; but when one analyses what is the real meaning of such phrases, it is manifest that all that it intended to be implied by them is that any rival trading which shall be started against the Association will be rendered unprofitable by the more favorable terms, that is say, the reduced freights, discounts, and the like, which will be given to customers who will exclusively trade with the associated body."

And in *Allen v. Flood*, 1898, A. C. Lord Herschell says at p. 138 :

"I now proceed to consider on principle the proposition advanced by the respondents, the alleged authorities for which I have been discussing. I do not doubt that everyone has a right to pursue his trade or employment without 'molestation' or 'obstruction,' if those terms are used to imply some act in itself wrongful. This is only a branch of a much wider proposition, namely, that everyone has a right to do any lawful act he pleases without molestation or obstruction. If it be intended to assert that an act not otherwise wrongful always becomes so, if it interferes with another's trade or employment, and needs to be excused or justified, I say that such a proposition in my opinion has no solid foundation in reason to rest upon."

The case of *Wampole v. Karn*, 11. O. D. 619, deals with a proprietary article, and it is a civil action. It does not appear that any criminal prosecution was founded on it. See *Quinn v. Leatham*, 1901, A. C., at p. 506:

"Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expressions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found."

And at page 512 :

"In *Allen v. Flood* the purpose of the defendant was by the acts complained of to promote his own trade interest, which it was held he was entitled to do, although injurious to his competitors."

The case of *Rex v. Clarke*, 14 Can. Cr. Cases, 46, and, in appeal, 57 was that of an Association composed of retail dealers in lumber, and they assumed to fix the price. Eligibility to membership was finally determined by the Directors, not as here, by the mere fact of being a wholesale dealer, and retailers who dealt directly with the consumers assumed to decree a monopoly, and to fix the price at which the monopoly should sell.

In the case of the *King v. Gage*, 13 Can. Cr. Cases, 415, the headnote is as follows:

"1. A conspiracy 'to restrain or injure trade' in relation to any commodity under Code sec. 498, sub-sec. (b) must from the context be taken to refer to 'undue' restraints of trade such as malicious restraints or those not justified by any personal interest for the protection of which the trade arrangement is made."

"2. Traders may legally organize for the protection and advancement of their common interests, provided that the interests of the public are not to be unduly impaired."

"3. A regulation of a grain buyers' association which required that its members on purchasing wheat from producers, should pay therefor not more nor less than one cent per bushel below the export market price, and so allow a fixed profit of one cent per bushel on the trade done by members of the Association on its own exchange or market, does not constitute an undue restraint of trade, if it appears that such profit is a fair and reasonable one."

Traders may legally organize for the protection and advancement of their common interests

A regulation fixing a fair profit is not in restraint of trade.

Interpretation of sub-sec. (b) of sec. 498 of Code.

It was tried by Phippen, J. A., who adopted the view taken by Killam C. J., in *Gibbons v. Metcalf*, 15 Man. R. 583, that subsection (b) relates to those restraints which are not justified by any personal interest of the contracting parties, but which are mere malicious restraints unconnected with any business relations of the accused. It was held in that case that the combination which the defendants there had entered into, though resulting in damage to some person or persons, is actionable only in cases where its object is unlawful, or where, if lawful, such object is obtained by unlawful means.

In 'Eddy on Combinations,' Volume 1, Section 556, the author says :

"Every combination, whether a partnership, an association, a corporation, or a combination of these various factors, is presumed legal until the contrary is shown by affirmative evidence." * * *

"In accordance with the views hereinbefore expressed, it is submitted that the correct doctrine is that all agreements underlying combinations are presumed valid unless they show upon their face

that the object of the agreement is to do that which is unlawful, injurious or oppressive. However, the presumption of validity which attaches to an agreement apparently legal in its terms and upon its face may be overcome by proof that, as a matter of fact, the agreement was entered into and the combination formed for unlawful, injurious or oppressive objects."

In section 560 he says:

"The right of a combination of dealers to advance their own interests by mutually agreeing that they would not deal with any manufacturer or wholesale dealer who should sell directly to their customers has been broadly upheld."

A combination of dealers can refuse to deal with any manufacturer or wholesaler.

For this contention the author cites *Bohn Manf'g Co. v. Hollis, et al.*, (1893) 54 Minnesota 223, 55 N. W. R. 1119. I cite the following extracts from a judgment of Mitchell J. in this case, page 1120:

"The case presents one phase of a subject which is likely to be one of the most important and difficult which will confront the Courts during the next quarter of a century. This is the age of associations and unions, in all departments of labor and business, for purposes of mutual benefit and protection. Confined to proper limits, both as to end and means, they are not only lawful, but laudable. Carried beyond these limits, they are liable to become dangerous agencies for wrong and oppression. Beyond what limits these associations or combinations cannot go without interfering with the legal rights of others, is the problem which, in various phases the Courts will doubtless be frequently called to pass upon. There is, perhaps, danger that, influenced by such terms of illusive meaning as 'monopolies,' 'trusts,' 'boycotts,' 'strikes,' and the like, they may be led to transcend the limits of their jurisdiction, and, like the Court of King's Bench in *Bagg's case*, 11 Coke, 98a, assume that on general principles they have authority to correct or form everything which they may deem wrong, or as Lord Ellsmere puts it, 'to manage the state.' But whatever doubts or difficulties may arise in other cases, presenting other phases of the general subject involved here, it seems to us that there can be none on the facts of the present case. Both the affidavits and brief in behalf of the plaintiff indulge in a great deal of strong, and even exaggerated assertion, and in many words and expressions of very indefinite and illusive meaning, such as 'wreck,' 'coerce,' 'extort,' 'conspiracy,' 'monopoly,' 'drive out of business,' and the like.

This is the age of associations in business.

Confined to proper limits they are laudable.

Danger that Courts may transcend the limits of their jurisdiction and "manage the State."

Exaggerated assertions as to trade combinations not approved.

THIS SOUNDS VERY LIKE THE PRESENT CASE.

"This looks very formidable, but in law as well as in mathematics, it simplifies things very much to reduce them to their lowest terms. It is conceded that retail lumber yards in the various cities, towns and villages are not only a public convenience, but a public necessity; also that, to enable the owners to maintain these yards, they must sell their lumber at a reasonable profit. It also goes without saying that to have manufacturers or wholesale dealers sell at retail, directly to consumers, in the territory upon which the retail dealer depends for his customers, injuriously affects and demoralizes his trade. This is so well recognized as a rule of trade, in every department, that generally wholesale dealers refrain from selling at retail within the territory from which their customers obtain their trade. Now, when reduced to its ultimate analysis, all that the retail lumber dealers, in this case, have done, is to form an association to protect themselves from sales by wholesale dealers or manufacturers, directly to consumers or other non-dealers, at points where a member of the Association is engaged in the

Retailers are a public convenience and necessity.

Dealers have right to protect their interests.

retail business. The means adopted to effect this object are simply these: they agree among themselves that they will not deal with any wholesale dealer or manufacturer who sells directly to customers, not dealers, at a point where a member of the association is doing business, and provide for notice being given to all their members whenever a wholesale dealer or manufacturer makes any such sale. That is the head and front of the defendants' offence."

Manufacturer may fix price.

I refer to the case of *The Commonwealth v. Grimstead* (1900) 108 Kentucky 59, affirmed in appeal 1901, 111 Ken. 203, where it was held that an agreement by one who buys goods from a manufacturer agreeing not to resell them for less than a certain price, does not violate section 3915, Kentucky Statutes. The Kentucky Statute in question provided that

Any corporation or individual who shall become a member of or a party to, or in any way interested in any pool, trust, combination or agreement, for the purpose of regulating the price, or limiting the production of any article of property, shall be deemed guilty," etc.

There is a decision of the Supreme Court of California sitting en banc., in the case of *Crogran v. Chaffee*, wherein it is held that fixed prices are not in restraint of trade. The Court sustains the manufacturer and holds that price cutters are liable if they do not maintain prices fixed by the maker of goods. I cite the following extracts :

Price cutters are liable if they do not maintain manufacturers' fixed prices

"The tendency of the modern decisions has been to view with greater liberality contracts claimed to be in restraint of trade. It is not every limitation on absolute freedom that is prohibited. As is held by the Supreme Court of the United States in *Gibbs v. Consolidated Gas Co.* 130 United States, 396-409, Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, the contract may be sustained. The question is whether, under the particular circumstances of the case, and the nature of the particular contract involved in it, the contract is or is not unreasonable. So, in *People's Gas Light Company v. Chicago Gas Light Co.*, 20 Ill. App. 492, the Court says: 'The tendency of the Courts is to regard contracts in partial restraint of competition with less disfavor than formerly, and the strictness of the ancient rule has been greatly modified by the modern decisions.'"

Ancient rule greatly modified.

"It is suggested rather than argued by respondent that the agreement relied on by appellant is unlawful under the provisions of the Statute of 1907, entitled 'An Act to define trusts and to provide for criminal penalties and civil damages, and punishment of corporations, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in this state; approved March 23rd, 1907, commonly known as the Cartwright Act.'"

Guild's methods approved.

In the present case there has been no evidence of the enhancing of prices—no complaint by any consumer—no complaint by any retail dealer—but rather approbation.

Wholesaler is proper channel of distribution for manufacturer.

It is conceded that the proper method of distribution of goods from the manufacturer is through the wholesale dealer to the retailer, and then to the consumer, because this is the most economical method. For, if the manufacturer attempts to deal dir-

ectly with the consumer, or even with the retailer, he must in a country like Canada, sparsely settled, and of enormous area, maintain a staff of travellers and also establish depots for his goods at important points. These are great outlets of expenditure, for the traveller carrying only one line of samples gets possibly as large a salary, and certainly spends as much in travelling expenses, as the traveller for a wholesale house who sells, we are told, three or four hundred different articles. This is one reason why the wholesaler undertaking the sole distribution gets a larger profit, and yet the price is not enhanced to the consumer

Price to consumer not enhanced.

The various cases of alleged oppression and "driving out of trade" of persons who either openly, or by some ingenious device, aim to belong to the wholesale trade, and at the same time sell at retail, are thus easily understood. If this system were to be practised, it would injuriously affect and demoralize the trade not only of the wholesaler, but of the retailer, and the consumer would certainly not be the better off in the long run.

Interference with regular channels of distribution may be prevented.

The same remarks apply to the efforts made to put a stop to the "cutting" of prices.

Price-cutting can be stopped.

There was some complaint about the system known as the "Equalized Rates," it being contended that it bore unequally and oppressively as against certain towns or districts. This statement was entirely disproved and it was shown that the "equalization" was based strictly upon the freight rates of the different railways, so that the retail merchants got their goods at the different points at practically the same prices.

Equalized rates approved.

I find the facts then to be as follows :

1. The defendants have not, nor has any of them, intended to violate the law.

Finding of facts.

2. Nor have they, nor has any of them, intended maliciously to injure any persons, firms or corporations, nor to compass any restraint of trade unconnected with their own business relations.

3. They have been actuated by a bona fide desire to protect their own interests and that of the wholesale grocery trade in general.

As far as intention and good faith or the want of it are elements in the offence with which they are charged, the evidence is entirely in their favor.

Have they been guilty of a technical breach of law ?

This question is answered by the citations which I have given above, and which cover every branch of the case.

Defendants are not guilty.

I therefore say that the defendants are not nor is any of them, guilty as charged.

There are minor matters as to which I, sitting as a jury, give

the defendants (as I am bound to do), the benefit of the doubt, and as to which I warn the defendants and those in like case to be careful e. g. as to alleged efforts to coerce wholesale dealers into joining the Guild. It is of the essence of the innocence of defendants that the privileges which they seek to enjoy should be extended to all persons and corporations who are strictly wholesalers, whether they choose to join the Guild or not.

March 7th, 1910.

ADDRESS

BY

E. F. B. JOHNSTON, K. C., TORONTO

ON THE

SECRET COMMISSIONS ACT

AND THE RIGHTS OF MANUFACTURERS,
WHOLESALE AND RETAILERS

GIVEN AT THE

CONVENTION OF THE
WHOLESALE GROCERS' GUILD

FOR THE PROVINCE OF ONTARIO

AT THE KING EDWARD HOTEL, TORONTO, ONT.

APRIL 27, 1910

PURPOSES OF SECRET COMMISSIONS ACT EXPLAINED

THE RIGHTS OF MANUFACTURERS, WHOLESALERS AND RETAILERS AS
EXPOUNDED BY E. F. B. JOHNSTON, K. C. AT CONVENTION OF
ONTARIO WHOLESALE GROCERS' GUILD—EVOLUTION OF
BUSINESS CONDITIONS AND WHY PRESENT CONDI-
TIONS WERE BROUGHT ABOUT—LEGAL COM-
BINES AND THOSE THAT ARE ILLEGAL,

THERE was once in my native country a very old and very rheumatic and very testy Prebyterian minister, and one thing he objected to was draughts in the kirk. One cold, raw day, by some unaccountable means, the officials had left the four doors of the church open. He spoke for half an hour or longer upon the elementary principles and the cardinal points of his discourse, and he suddenly discovered the draught was too much for him. Leaving the academic, he at once imported into his sermon more vigor than usual. Thumping the pulpit, and turning in wrath to the congregation, he said : " Elders and deacons, shut the north door, and see that ye shut the east door ; dinna forget to shut the south door and the west door." And, dropping his voice, he went on with his discourse. Two old gossips were coming out when the service was over. One of them said to the other : " Maggie, how did ye like the minister to-day." " Well," she said, " I didna quite follow him through his cardinal points and his elementary principles, but, my, he was grand on the subject of shutting the doors !"

If I am grand on that subject, If I can help you in any way to shut the doors against the enemy I shall feel that what labor I have spent in regard to what I have done will not have been spent in vain. I do not think I can say much to you on the subject of how to make larger profits—a subject I would like to talk to you about, and give you some information upon if I were qualified. But, you see, my position is the converse of yours ; I am for small profits. I am for cheap food. I am, from the personal standpoint, for cutting prices, so as to get my goods cheap ; and looking at it from that standpoint I have endeavored to see, being a consumer—not a very large one, it is true—I have looked to see how it would affect the general community and the prosperity of the trade and commerce of this country if I, a consumer had my way. Therefore, we have to look at it from both sides.

SPECIFIC REASONS DESIRABLE.

If, however, you give the consumer the absolute control of the trade and business of this country, you are out of existence. If you give the wholesale dealer, or the manufacturer, the absolute control of the business of this country, and it happens to fall into the hands of men who are not, perhaps, over-scrupulous—occasionally we do get these men—then you destroy the rights of the consumer; and therefore, what I have endeavored to see for myself, without knowing the price of sugar, or the price of tea (the only thing I know is the price of tobacco), without knowing any of these things, I do not want to say, as did the old magistrate who was accused of partiality in the disposal of a case. He said: "I resent the imputation, and I deny all allegations of improper conduct. I have been on the Bench for thirty years, and throughout the whole of that time I have invariably taken the middle course between right and wrong!"

Now let me say a few words of a general character. A few ideas will lead up to what I am going to say finally in regard to the matters that I have to deal with to-day. In this rapid age, we all think too generally. We draw too many general conclusions. The man who can sit down and work out concrete principles, who can give the specific reasons for the specific act, is the man whose opinion is worth more than the man who casts the whole thing aside upon a general assumption, and says it is good for this or bad for that. The general principles of all business are manifest to the minds of those who are engaged in them, excepting in my own profession. There you never know where you are at, because judges will say one day that the principle is so and so, and that is reversed next week by another set of judges. I think it would be wise to rather crystalize some ideas that I have upon the subject, and I assume that my invitation to address as large a jury as this is, is due to the fact that myself and my friends, Mr. Armour and Mr. Ambrose, were able to do some service in the interest of a depressed trade, in the interests, I may say of, to some extent, a persecuted trade during the last ten or fifteen years.

In order to understand the exact position of matters, and in order to see just exactly where we are at in dealing with a subject of this kind, it is as well to ascertain what combines mean, what the Secret Commissions Act was intended to prevent, what indeed the criminal law of this country prevents, as I shall show you later on, I hope to your satisfaction. In dealing with that we have to see for a moment (I shall not detain you upon that point) what the origin of just such an organization as is represented here to-day meant.

The bodies were called "guilds," an honest old name, but one which in the minds of some people who did not understand the position, savored somewhat of a combine. But it is exactly

what you and every other trade and business profession are striving for to-day, and what you must strive for if you desire to retain your individuality and your concrete existence. It was founded upon common brotherhood, upon loyalty to each other; it was founded upon a system of faith and confidence that perhaps the world has never seen or experienced in these later days of trading and barter of exchange; and more than that, it was based upon the highest principles of morality and religion.

EARLY HISTORY OF GUILDS.

The very first guild that was organized was as far back as the days of King Canute, and that was purely a religious and moral guild. It was for the support and maintenance and assistance of all the infirm members; it was a looking after of those who were unable to look after themselves; it went so far as to provide for the burial of the dead. The first business guild was at Cambridge in England, a guild that to some extent dealt with trade relations. And just let me tell you from an eminent author what the principle underlying that guild was, and let us apply it to the present day concerns :

“ If one misdo, let all bear it. Let all share the same lot.” That was the motto on the flag of that guild. It was a banding together not for the purpose of injuring a human being, a banding together of men engaged in the same class of business for their self protection, for the self-existence of their own trade or calling and for the protection of each other. That implied a very high moral rectitude; that implied the greatest amount of loyalty you would expect one human being to exhibit towards another; that implied absolute confidence in each other.

The old German guilds were based upon somewhat of a similar foundation. They were national to some extent, at the same time they were bodies that did deal incidentally with some matters of trade, but it is when we come to the London guilds that we find the ends of the trade and business of the country being taken care of. These guilds were originally formed for the maintenance of peace, for the protection of property, the suppression of violence and matters of that kind, and I am citing now from a well-known author upon the subject. As trade began to change, with various interests cropping up, so did the guilds assume greater control over trade relations until they became actually the municipal government of such towns as Berwick-upon-Tweed, taking charge of the municipal administration, controlling the markets and the police—taking practically the position—well, not quite the position of the Board of Control in the City of Toronto, because they did better than that—they managed things so well that they continued to flourish for hundreds of years along exactly the same lines until they became what were called the Crafts Unions—where you had the capital on the one side in the guilds as they originally started, and the craftsmen on the other side

looking after the details and doing the work which led to the establishment of modern day trades unions

I am not going to take up any further time upon that, excepting to read an extract to show the high character of the guilds in those days. The same foundation ought to underlie any body of men who seek to assume for themselves the rights and privileges which you have a right to assume and seek in protection of your trade.

“ The guild stood like a loving mother providing and assisting at the side of her sons in every circumstance of life, and cared for her children even after death; and the ordinances as to this last act breathe the same spirit of equality among her sons on which all her regulations were founded and which constituted her strength.”

Having given you an outline of that, let us see what the conditions of trade are to-day, and how it is necessary that something—modernized, it is true—something along these lines must take place to-day; not to hurt your fellow man, nor to prevent your fellow tradesman from getting on in the world, not to prevent his buying as freely as he can breathe the air of Heaven, but to so regulate and control trade and commerce and business along these lines that instead of being what some of you gentlemen were charged with being—violators of the law—you ought to have been credited with being protectors and defenders of honest law and honest administration

EVOLUTION OF CHANGED CONDITIONS.

Look at it for a moment. We cannot trade individually; that of course, is out of the question. We have reached an artificial stage in the history of business, not only in this country but in all civilized countries, where the individual trader is out of the question. You start first with the mere exchange of one product for another. You have no division of classes, no division of responsibility; it is simply one man with the other. By and by, as our wants increase—and they are increasing very rapidly all the time—and as the supply becomes larger, you create a totally different condition of things, a complex position. Let me illustrate. I can recollect things that happened over forty years ago, and I can recollect what was the condition of the country longer than that. And what was it In the original days of Canada the settlement was small, and confined to a very narrow area. I can remember the time when the shoemaker came round and made the boots for the family. He was the producer, the manufacturer. I can remember the time when the woman used to come round and make the dresses for the women-folk of the family. I can also remember the days when it was no uncommon thing for the bagman to come round with his wares, to be followed, as the area increased, by the peddler.

Then you have the origin of the Departmental store; the four corners—namely, the blacksmith's shop, the tavern, the general store and the other complement. That was caused by what? The general store was brought about not because the man wanted to take the whole business of the neighborhood, but by necessity, the demands of the people. Then you go on until the merchant came in with his specific line, the grocer, the dry-goods man as the case might be. Thus has the country expanded, and we have to consider not only the expansion, but let us look at it from the closer standpoint. It was not the expansion of the country so much as it was that the demands, the wants, and the tastes of the people were becoming more varied and had to be supplied in some way or another. They could not be supplied by the general store or the man peddling his goods about the country.

Thus you create a different state of affairs. There was thus created a purely artificial condition. In all business, we have an artificial condition; we have an artificial condition at Ottawa. What have we got? We have got the revenue, the system of protection, and various other policies—but take protective principles, free trade principles, anything you like; they may be perfectly good under certain conditions, but when you come to a certain complex, artificial condition in the affairs of any country, to say nothing of the individual community, you have to devise something to meet the requirements of that condition, and that is how you get the wholesaler. Why? Because we have, as I said, a sparsely settled country. You had to reach the consumer through certain media. What was the best? It was not that the wholesaler arrogated to himself the right to charge what he pleased. He did not desire to cut in on the privileges of the retailer. He was the product of his times, and he came through a system of evolution; just as you find in the common life of the country to-day that the man who had his oxen and took his grist to the mill, to-day has his carriages and perhaps an automobile.

The man who had his home-made shoes fifty or sixty years ago, to-day has the finest patent leather the manufacturer can produce. Conditions have changed and in that change has grown up the body of men I see before me. In other words, your body is the result of evolution. It is not the result of any corporation or any body of men to interfere with trade or commerce at all. The condition of trade has brought you into existence, and if conditions were changed, you would be without a calling.

GETTING TO THE CONSUMER.

Now you will bear in mind, as I said before—and let us get down to the concrete principles—you always had the producer, whether it was the home-made shoemaker, or the man who made the axe handle does not make any difference. You always had the producer. To reach the consumer in the early days was a very

simple matter, but when you came to the condition of things you have in Canada to-day, and have had for the last forty years, the reaching of the consumer becomes a very complicated problem.

You cannot compare London, or any of the big English cities, with Canada, because within an area of a few miles they have more consumers than we have in the whole Dominion of Canada. You had to reach the consumer in some way. You did it originally through the retailer. Then came the necessity for the wholesaler. Here is where a misconception has taken place in all the prosecutions that we have had in the courts in this country; an entire misconception.

The object and the very reason why the wholesaler came into existence was not that he should make money and increase the prices or eliminate competition, but to reach the consumer in a more direct and cheaper way than ever had been done before. He was created by the condition of things as they developed and as the process of evolution went on. The result is to-day we are dealing with three classes. We are dealing with the manufacturer, the wholesaler and the retailer, and I am not going to argue for a moment on what has been declared by the highest court in the province and some of the highest courts in England, and which appeals to our common sense, namely, that our present system has been found to be, as an absolute fact, the best and cheapest method of connecting the bank of the manufacturer with the bank on the farther side of the stream, the consumer.

RIGHT OF THE MANUFACTURER.

The manufacturer—let me say this in order that we may clear the way from a legal standpoint—the manufacturer has the absolute right to fix his price. It was argued in the cases I have referred to that by fixing his own price, and perhaps enhancing it, he was violating the Act. Not so. For instance, we have seen again and again, the result in argument by taking the case of Sir William Macdonald and his tobacco. He produces a certain article. He is the only man who knows what the cost of that article is to him; he is the only man who knows how much the cost should be to enable him to make a living profit. He fixes that price. If he fixes it too high he has got the American Tobacco Co. coming in with perhaps as good an article at a less rate. He has got other manufacturers coming in in the same way. The same with the sugar refiners and canned-goods people. You may combine, but the moment you increase the price beyond the living profit, the moment instead of destroying competition (and the economic history of this country tells it), that moment you actually increase competition, because you encourage others to go into the business. We had the evidence of Mr. Robertson, who said the fault he had to find with the Guild was that it increased competition, and there was a great deal of truth in the suggestion he made.

When you come to work it out, the moment you combine, or do anything that tends to enhance the price at all materially, that moment you find thousands of others ready to come into the market and supply the demand. So there is first of all the interest of the manufacturer, to have his profit; and he alone can tell, if he is an honest man he will tell, what the living profit should be. If he fixes it too high, he is met at once by opposition, and I care not what the merger may be, what the combination may be in even such an important body as the wholesale grocers of this country—controlling as you do a very large amount of the retail trade of this country—even you cannot control a situation so as to prevent competition.

CARRYING OUT AGREEMENTS.

These things must, however, be worked out in good faith. The manufacturer must depend upon the honesty of his agents. You are his agents. If he makes an agreement with you, he has the right to see that the agreement is carried out. Not only so; he has the right to so carry on his business that he may rely absolutely upon the fact that that agreement will be carried out—because according to the agreements he makes, so he cuts his cloth.

Now it is a matter of you gentlemen acting either individually or in combination. It is a matter of you handling certain products of this country. And to the extent to which you are able to make your trade relations perfectly honest in the observance of the contracts and all the rest of it, to that extent you are not only benefiting yourselves, you are not only benefiting the manufacturer, but you are reaching out towards the benefit of the consumer.

WHOLESALEMAN'S POSITION.

The wholesaler, as I said, comes next to the manufacturer in the ordinary course of proceedings. The wholesale trade has been in existence for years in this country. It is no new thing to control the sale of goods of any particular manufacturer. It is needless for me to say where the wholesale trade is of benefit, because it is apparent to everybody. You save money, you save time, you put your retail customers in a better position, you form local distributing centres, you carry many of these men along from year to year who would otherwise perhaps go into liquidation; and if the wholesale trade is carried out according to the practices and regulations of the Wholesale Grocers' Guild, with which I may say I am familiar, you are not only conferring upon yourselves the dignity of an honest calling, but you are protecting the retailer, and you are also reaching out to protect the consumer.

But (like all other agents, it is necessary we should be honest among ourselves, and in saying that I speak as if I represented to some extent, at any rate, the wholesale people for the time

being. When we make our contracts, having regard, as I said, to the complicated economic conditions of to-day, these contracts must be rigidly observed. The moment you break the smallest pin-wheel of a machine, the machine is out of order. The moment you get grit—I don't mean political grit—into the delicate part of your machinery in a factory, that moment your machine becomes more or less affected. So here. The moment you get any misunderstanding, the moment you have any difficulty arising from the non-observance of a contract or otherwise, that moment your machinery is not perfect and something will go wrong. In a guild, or in a body of men such as I see before me, an organization such as you have here—I should say one dishonest man will upset the calculations and the working out of the scheme of all the other members of the institution.

EFFECT OF RETAILERS CUTTING PRICES.

Now, about the retailers I shall say very little. That is a subject that, I understand, has been dealt with. But I will point out that the same principles should apply in the minds of the retailers to the wholesale man as should apply in the mind of the wholesale man to the manufacturer. The retailer is everywhere in touch with the consumer. He is the man that has the last stage in the distribution of the goods, from Montreal, Toronto, Hamilton, Winnipeg or elsewhere, wherever they may be produced, and each one of these men is more or less dependent on the honesty of his fellows. Take two men in the village. What is the result? They begin cutting prices. They begin struggling for trade not upon open and honest living profit basis. And what is the result? It does not need me to tell you that one and perhaps both of these men will go under.

Now, to keep this state of affairs in check, generally, I may say before I go to the legal aspect of the matter, to keep these in check, it is necessary that you should have regulations, and I shall tell you later on how far you are entitled to regulate without violating the law. But you have to regulate for several reasons, and I have noted them here in a very simple and itemized manner. You have to regulate this body, and not only this body but trade conditions. First, as I have said, to prevent any dishonesty being carried on, to stop the unfair dealing, to see that your system is carried out in its entirety and in every way to deal fairly and properly, to see that all your contracts are kept, and the contracts of your fellows, and to see after the cutting of prices, which has always been a sore spot with the wholesale man. To see that this is put a stop to and in order to effect these matters you have a perfect right, as I shall show you in a moment, to pass your regulations and impose your penalties. If you cannot carry out your penalties, if you cannot carry out your system because your rules are not regarded, then you have a perfect right to say, "We

will exclude so and so from our exchange," or guild as the case may be.

By reason of many of these violations happening, I am told by some of my friends among the wholesale grocers, the wholesale grocery trade became bad, profits were reduced below a living price, the whole system was disorganized and demoralized. They were carrying a lot of lines at a loss. Even the manufacturers were selling to the retailers over their heads at the same price as they were selling to you. They were depriving you of your market, the only market that was open to you, just as it would not be right for you to sell to the consumer at the same price as the retailer can buy his goods. In other words, they were selling your customers and wrecking your existence, taking away from you the only means of living you had, and as I put it to the court on more than one occasion, the fight you had to make was not for fair trade, the fight you had to make was not for high profits, the fight you had to make, gentlemen, was for your very existence. Hence the organization. Then you had your Guild, or Exchange, or combination. I like the name Guild, because the meaning of that word is plain. It signifies "payment." If you say "guild" it means your word is as good as your bond; that is the underlying principle of the whole transaction—honest, fair dealing.

PAYS TRIBUTE TO WHOLESALERS.

What was the aim, as evidenced by many witnesses at the trial, the aim of the guild? First, it was to stop the cutting of prices; second, it was to try and make men, some men, live up to their agreements, and let me pay you the highest compliment any man in Canada can pay to a body of men. Perhaps it has not occurred to you in this concrete form, but let me say as a truth, and take home to yourselves as a compliment coming from, I may safely say, one who knows from the best evidence that was given: For twenty years this body of wholesale grocers stood upon their rights, and on that twenty years' record they were put upon their trial. The old, dusty letter books that were almost obliterated by age, the old letters where the ink had faded out, the documents and papers and books of account, where you could write what you pleased on the covers—all these things were raked up against the Wholesale Grocers' Guild in the case of the King against Beckett and others; and in all the evidence, with all the force the Crown had at its back; with all the money that they could expend, with the assistance of able counsel and I don't know how many detectives besides, with ways that were dark and tricks that were vain, seeking to unearth evidence which had been left by a dead man; with all that in the whole twenty-years' record we only found three dishonest men in the wholesale grocery business of this country! And yet they say "We are afraid the wholesale grocers will combine to the injury of the retailer and the injury of the consumer."

You have to build trade up, you are the gentlemen who have a great deal to do in the building of trade in this country. You have an example set you by two governments at Ottawa, by a system of protection, you have the theory of not cutting prices. Protection was passed for the purpose of doing what ? To prevent the prices being slaughtered by foreign manufacturers with their surplus stock.

You, in endeavoring to stop the cutting of prices in your own land, are charged with crime. Fortunately the judge did not look at it in quite that light. This is important to know, and I shall briefly notice it. When this organization was formed you took the precaution, and a very wise one, to say " We will not exclude any wholesaler. We shall not determine who shall be members, the trade or business of the man shall determine that. If he is a wholesaler, he shall come with us; if he doesn't choose to come he can stay outside; he shall receive exactly the same benefits as we have, without perhaps any of the responsibility." That was the distinguishing feature of your wholesale Association. No man was prevented from getting his goods. The only test was this : If you gentlemen in Toronto and Montreal, and elsewhere, you producers, employ us to act as your distributing agents you must not sell to our customers at the same rate as you sell to us.

It doesn't need any argument to convince anybody that that was common sense and fair play and the honest way of doing business and whether a wholesaler belongs to the association or not, he would be entitled to get his goods at the same rebate, royalty, or otherwise, as you were able to as members of the guild, and he would save his admission fee and his charges for lawyer's fees.

What do we find with all this cry against the wholesale people? We find this singular fact. Not only were you generous enough, not only was the wholesale trade generous enough to say, ' We won't exact membership as a test; the test shall be a wholesaler or not a wholesaler.' Men who never saw the inside of the Wholesale Grocers' Association room got their goods, got the same rebate and the same protection as you did. More than that, men like Mr. Eddy, like Sir William Macdonald and others, had old customers who had grown grey in their relations, and as a matter of sentiment you respected that and never objected to their selling to a few men who were old friends of theirs, and they have continued to sell to them as retailers at the same rate as they were selling to you. I ask, where you could find a body of men who were as generous as that ? It would be a crying shame if there was a law upon our Statute Book that would hold them responsible for any kind of a reasonable and proper combination such as this was shown to be.

CASE OF PATENTED ARTICLES.

There are some things, as I have said, in view of the general

✓ conditions of matters, I should like to point out to you as things that would be perfectly legal to do, and I have taken some little care to put them in a shape that cannot be objected to. In the first place, as I pointed out, it is perfectly legal for the manufacturer to fix his own price. If it is a patented article he must place it upon the market at a reasonable price, because he has been given a monopoly by the Crown to manufacture that patented article to the exclusion of everybody else, and the Crown says, having given you a seven-year monopoly, with a renewal perhaps for seven years more, you must meet the public requirements. There can be no competition in that patented article, and we will so enact by legislation that you shall not be allowed to charge an extortionate price for that particular article.

But even with the patent you do not destroy competition. Why, look at the condition of things in regard to sewing machines and bicycles. I have never had much use for a sewing machine, but I know something about bicycles. Ten years ago you paid \$125 to \$150 for a bicycle; you can get one to-day for \$40 or \$50, although it may be in part patented. Thirty years ago, you would give \$30, \$40 or \$50 for a hand sewing-machine that will cost you \$10, \$12 or \$14 to-day. And why? Notwithstanding the protection by patent there was a striving by others to enter the field against the patent, and so successful were they in some cases that the patent was not worth the paper it was written on, commercially speaking.

WHEN COMBINES ARE ILLEGAL.

But leaving the patent question out, you have the right to say to manufacturers:—"Fix your own price." And if the tobacco man, or the sugar man, or anybody else, charges more than a similar or a little inferior article can be bought for elsewhere, he will soon be out of business. Trade regulates itself. All we want is a good, straight, stiff, honest backbone at the back of it.

MANUFACTURERS HAVE THE RIGHT TO FIX PRICES.

✓ I say manufacturers have the right to fix the price: I say also the wholesale grocers have the right to combine honestly for self-preservation, and that is the very essence of the King and Beckett.

✓ There is a sort of feeling generally amongst people that a combine is illegal. Nothing of the sort. A combine, as we understand the word ordinarily, is just as legal as anything else; but you must not so combine as to produce the injurious effects mentioned in the Statute. You must not do it for the purpose, bear in mind the expression, for the express purpose or even the incidental purpose of enhancing prices. You must not do it for the purpose of limiting competition, or to interfere with the cheap and rapid transportation of goods. But for the protection of your own trade, for your self-preservation, a combine of the closest and most vig-

orous character is just as legal as anything else. This is one thing you can do.

EXCLUSIVE SELLING AGENTS.

Another thing you can do. You can make your arrangements with the producers or the manufacturers to be their exclusive agents, and say to the manufacturer, "If you are going to employ people other than ourselves we won't act as your agents. Take the other people; leave us alone." That is perfectly legal. There is some hazy idea that this is preventing other people from trading. Not at all. I have a perfect right to go to the Massey-Harris people and say, "You appoint me, or myself and the chairman, as agents in the County of York for the sale of your goods exclusively." I have a perfect right to do it. The chairman and myself have a perfect right to say, "If you sell through anybody else, even if you yourselves sell in the County of York, we won't sell your goods." It is perfectly proper and perfectly legal.

THE BREAKING OF CONTRACTS.

Then you have this further right. You have the right to say, "You shall not deal with a man who is a contract-breaker."

MANUFACTURERS NOT BOUND TO SELL TO EVERYONE.

I am not bound to sell my goods to every man who comes in. I am not bound to produce goods for any man who chooses to come along and say, "I want so many goods, and I am willing to pay for them." I have a right to ascertain the character of the man I am dealing with, and I have a perfect right to say I shall not sell to a man who has red hair or black, as the case may be.

Why should not I? I control my own situation. No reason in the world why I should not. And if you find a man is not keeping up his contracts, if you find he is not an honest man in respect to his contracts, you have a perfect right to say, "We shall not deal with that man." You have a perfect right to see that the agreements upon which you shape and mould your business are kept; a perfect right to say these agreements are a part of the system. When you break any of the agreements you jar the whole system, it affects our business, our trade and our reputation, and you have a perfect right to see that these agreements are not broken.

REGULATE THE OBSERVANCE OF CONTRACTS BY PENALTIES.

And you have the further right (keeping within the lines I have indicated), to regulate these by penalties. No company could live unless it had some power to impose penalties, either under its charter or under the general law of the land. Take any company, I don't care what it is. In dealing with certain stock—I am

speaking of share stock—in that company, a man does something that is wrong. If you had no control over that man your company could not continue to exist. The general law of the land applies to him, but you have just as much right, so long as you keep within the limits I am indicating, to impose your penalties upon that man within your internal organization and your internal powers as you would have if the general law of the land did not apply to the case in point.

MUST ACT IN GOOD FAITH.

You have a further right—and this is perhaps the widest right you have—you have the right to do all things necessary to protect the interests of your business, provided they are done in good faith. Of course, if you once have malice against a man—say there is a man John Smith: “I have got my knife ready for him, and I am going to see he is cut off”—there you are actuated by an unlawful motive, a malicious motive, you have an ulterior object in view. But if you act in good faith, having the grounds for your action that for some reason or other it is necessary in the interests of your business—without exceeding the proper limit, without exceeding any legal rights at all, even if injury may come to a man through your act, that does not make your act illegal if it is done in good faith in the interests of the preservation of your business. I will illustrate what I say by reading an extract to show you there is law upon the point. We have the law laid down by no less a judge than Sir Glenholme Falconbridge, Chief Justice of the King’s Bench, following the judgment of the late V. C. Strong :

“It would be dangerous to accept as a settled doctrine of political economy or proposition of law, that under any and all conditions, and at all times, every man or corporation should be declared to have an absolute and inalienable right to buy and sell, trade or barter, without any other person or corporation, without restriction as to quantity or price.”

We have such a man as Lord Herschell, in England, in the Court of Appeal, saying :

“I do not doubt that everyone has a right to pursue his trade or employment without ‘molestation’ or ‘obstruction’ if those terms are used to imply some act in itself wrongful. This is only a branch of a much wider proposition, namely, that everyone has a right to do any lawful act he pleases without molestation or obstruction. If it be intended to assert that an act not otherwise wrongful always becomes so, if it interferes with another’s trade or employment, I say that such a proposition in my opinion has no solid foundation in reason to rest upon.”

That is the judgment of one of the highest courts in England.

A well-known and authoritative author, Eddy on Combinations, says :

“The right of a combination of dealers to advance their own interests by mutually agreeing to decline to deal with any manufac-

turer or wholesale dealer who should sell directly to their customers has been broadly upheld."

That is what I am contending for. So long as the objective point is the self-preservation of your business, is the interests of the business, although it may wipe other men out of existence, that is a matter of no consequence so long as it is done in good faith and not for any ulterior purpose.

And then we have the language of Chief Justice Falconbridge, who decided the case of the Guild. "The various cases of alleged oppression and 'driving out of trade' of persons who either openly, or by some ingenious device, aim to belong to the wholesale trade, and at the same time sell at retail, are thus easily understood. If this system were to be practised, it would injuriously affect and demoralize the trade, not only of the wholesaler, but of the retailer, and the consumer would certainly not be better off in the long run."

THINGS THAT ARE ILLEGAL.

I have told you the things that you may do. I will tell you now the things you cannot do; and they are very few.

First, it is illegal to combine with manufacturers to fix prices. You leave the manufacturer alone, trusting to the tender mercies of your executive, Mr. Beckett, Mr. Blain, and a few others; their work showed up fairly well at the trial. Let your dealings not be with the manufacturer as to fixing prices, because that is an illegal combination. It is illegal to exclude wholesalers from your organization if they desire to join, because you would have no right to determine who should be members, except by the broad test of qualification. You would be taking upon yourselves to personally discriminate, a thing which is not permitted in law.

Another thing you cannot do primarily, although you may indirectly, or rather, it may be the result of what you have legally done. You cannot enhance prices by combinations or agreements or arrangements. The law positively says that is wrong. As I pointed out, you may do a great many things that may have the effect incidentally of increasing prices, but you cannot devise a scheme for this purpose. It must have the foundation of necessity and the saving merit of being in your own interests and in the interests of your own self-protection.

Another thing you cannot do. You cannot by any means known to the law, although I am afraid it is sometimes done—you cannot coerce any man into your belief or your system or your method. Every man has the right to his individual opinion, to exercise his individual act, and the moment you attempt anything that shows there is coercion against an individual, that moment you are within the scope of the law.

EXPOUNDS SECRET COMMISSIONS.

Having said that much, perhaps more than I should have said, let me call your attention to an Act that was passed a short time ago, and let us see where that leads us. If I am right, in what I have pointed out in regard to the condition of trade, the necessary incidents of it and the necessity for the present division you have got of your three classes, then we find the law protecting that state of affairs if honestly carried out. There was a great deal of trouble in regard to many commercial matters between agents and contracting parties, and Parliament passed an Act dealing with that very subject, and that is known as the Secret Commissions Act of 1909.

Under that Act an agent means any person employed by another. The first section or two does not apply to the case which I understand will happen even in a well-regulated family like the Grocers' Guild. In the desire for business, and in the effort to make big returns, and sometimes perhaps if the agent is paid by commission, in his self-interest he will go to the retailer and say, "Here are so many packages; they will cost you \$12." The retail dealer says, "No, I won't buy them. I believe I can get them cheaper from another man." The agent says, "I will allow you a rebate," and he does it in this way. He says, "I will give you a dollar," or fifty cents, as the case may be, which would be a very high percentage upon a twelve-dollar lot of any particular article. He gives him the fifty cents, or the dollar, the man buys the goods and gets his rebate in that surreptitious way. The agent, if his principal is honest, dare not return it to the principal, because he knows his principal is under a moral, if not a legal, obligation, not to sell at less than a fixed price. He returns it as his expenses, sends in the voucher and adds the fifty cents to the week's account. He has got the order and thinks he has done an honest transaction. A great deal of wrong-doing may take place in that way, but when we come to the Act, whatever view may be taken of the earlier sections—I have some doubt myself as to how far they apply—but when we come to Section (c) of the Act you will find this, "Being an agent," that is, a person employed by another—"being an agent, knowingly uses, with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement that is false or erroneous or defective in any material part, and which to his knowledge is intended to mislead the principal."

WHAT THE PENALTIES ARE.

The man who does that is liable on conviction to two years' imprisonment, or to a fine not exceeding \$2,500, or to both. The agent violates his principal's contract by selling below the fixed price; he is cutting the price. He is not doing it in the interest of his principal, because his principal loses the fifty cents or the

dollar, as the case may be—I am only taking this small amount to illustrate.

He is using his principal's money for a certain purpose that is not proper, and in addition to that he is returning his voucher to his employer, which is false and intended to mislead his employer because he wants the employer to believe that the fifty cents was travelling expenses, or travelling allowance, instead of the rebate, which was an unlawful act.

It is well for the wholesale grocers to know this. But apart from that let us see what the statute says. We have a particular statute known as the Criminal Code, and I have summarized a section in order that it may read to you intelligently. Statutes are often passed which are not intended to read intelligently, because if they did and any man could understand them, my occupation would be gone.

This is Section 415 of the Criminal Code, which I have summarized, "Any person being a clerk or servant who falsifies any book, paper or writing, or makes any false entry in any book, paper or writing, belonging to his employer, or that has been received by him on behalf of his employer or concurs in the same being done, is guilty of an indictable offence," and liable to maintenance, food and clothing at the expense of the state for seven years.

I say that the agent who goes out, without the knowledge of his principal, and does these things for the purpose of cutting prices, will find himself in grave difficulty some day, if not under the Secret Commissions Act, at any rate under Section 415 of the Criminal Code.

Now just a moment with regard to the Secret Commissions Act, and see what was intended to be covered by it. The Secret Commissions Act was intended primarily, no doubt, to prevent violations by agent under contracts of various kinds. The consideration, of course, to the agent that is mentioned in the Act would be the man buying the goods. It is to the personal advantage of the agent that he sell the goods; it is to the personal advantage of the agent that he extend the business of his employer, because so will he be rewarded, not only here, but hereafter. Under that condition of things, to begin with, the account he returns to his employer, is absolutely false; and let me say, if the wholesale grocer stands in with his agent in the deal and knows it, and authorizes it, either expressly or impliedly, the agent is not responsible. But I am taking a case where the agent does it on his own account, and for the purposes which I have mentioned.

TO BRING ABOUT HONEST DEALING.

The object of this Act was manifestly this: to keep the agents and all persons dealing with them, honest. That is the first propo-

sition. The principal, the wholesaler, is not there; he has to trust his agent, he cannot go round and control every act of his traveler, he cannot see that the law is carried out or if his contracts are carried out; he must trust his agent, and it was important that some safeguard should be given to the employer in regard to the conduct of his agent, so that if he did that which was illegal he might be reached in some summary way.

The second object of the Act was to prevent the rules and contracts and regulations of the employer from being broken. Otherwise there would be no check. An agent could go about and break all the rules and regulations you could put in force. Then the third object was apparently to prevent collusion between the agent and the person he was dealing with, which was one of the most important elements of the Act.

Now you see how readily it could be done in the way I have indicated, and I am told that is the way it is done. I am advised that is the fact, and I am pointing out that that being the fact, such a man is liable under the section; and if he is not liable under that, he is clearly liable under the section of the Code.

I have just a few words to say about the cases which have been decided in our Canadian courts.

DECISIONS RE COMBINES.

It is a matter I should like to speak to you about just for a moment. There is a great deal of misapprehension with regard to what has been decided by the courts in regard to combines. I am going to tell you briefly what has been decided in this country. In the Elliott case, the Ontario Coal Association, of Brantford, they had a list of members, and they refused to take in more members, although those seeking admission were on the same plane and belonged to the same class as the members who arrogated to themselves the right to control the coal situation. And the reason given on the by-laws was, they called them "eligibles"; and a man was only eligible up to the point when the company could not stand any more competition. In other words, as soon as they reached the high-pressure of competition the eligibles were shut out. They prevented other dealers from joining the association. The wholesaler couldn't get his coal, although he was in the same line of business as the members of the association.

The object was, under their articles and by-laws, to prevent anybody but the gentlemen who formed the combine, to prevent anybody, no matter how well qualified he might be, in the same line of business, and entitled to the same rights—to prevent these men getting the coal. The test of admission was not, "Is this man a wholesale coal dealer or a coal jobber?" The test of admission was this: if there were enough members to exclude competition nobody else, not even the proverbial Irishman, need apply; because he would be shut out. The whole object was to keep down

competition, and therefore the courts very properly said: This is the worst kind of combine. It is a combine to make money, pure and simple, and therefore it is illegal.

Take the Clark case; a Manitoba case. There the retail dealers were combining. It was only such retail dealers as the directors of the company determined by ballot or otherwise that could get into the association. Every retailer couldn't get in—only the favored few. A by-law fixed the prices, mark you. They combined to fix the price, combined to determine who shall and who shall not be members of this close corporation. They determined the price themselves, not as where the manufacturer determines it, in your case; or as where any wholesale man coming along with a clean record is welcome to join your association. Not the case at all. There the dealer was not joining as a retail dealer carrying on business. That was not the meaning of the word "dealer." The word "dealer," as declared by the by-laws of that Association meant "member," and a man who was not a member was declared not to be a dealer.

These people were dealing directly with the consumer, and the result was immediate. You hadn't to go through two or three channels, the price was at once fixed by these men, and at once myself and a million other consumers, whoever they might be, had to pay that increased price.

In your record of business, matters are entirely different. Strange that with all this talk about combines, you can buy sugar to-day cheaper than you could twenty-years ago. Singular thing that you can buy better tobacco to-day cheaper than you could ten years ago, although I am told some of the producers are compelled to put it up a little lately owing to trade conditions.

CASE AGAINST THE PLUMBERS.

You have made no attempt to enhance price. The effect, as I pointed out, might, under certain other conditions, have been to enhance, but the object was not to increase, and, as I say, the Clark case differed upon that particular point. Then there was another case—you will remember the plumbers' case. Well, we have no sympathy with the plumber. I tell you that much to start with. He did what was manifestly a very risky thing, not even the semblance of such a thing as was at any time done by or among the members of the Grocers' Exchange. I have no hesitation in saying of your combination, and I think it is a praiseworthy thing to say, that you have sense and honesty and courage enough to go out and say, "Yes, against all dishonest dealing, against the contract-breakers and the cutting of prices, we will combine."

But, in the plumbers' case, when they got up steam, they got to this stage; that the dealers in exactly the same class as the association members could not buy from the producers or the mid-

dlemen; could not buy at all from them except at an advance. They could not even buy at the price the men in the association were buying at. But if the master plumbers, not being members (this is your case), had been able to go into the open market, being equally qualified with the members, and buy at the same price, there could have been no case against them. Instead of that, they formed a combination outside of that, and said : " Here is the supply house; you must get everything from that supply house; and in the meantime there was this supply house enabling the members of the association to get their goods; and at the end of certain periods of time they would divide up the whole business and make the profits. And so the court properly held that this was an evil combination, and one which ought to be punished by law.

In this matter we find the same principles that governed and were approved of in the Gage case, the Ontario Salt case, Gibbons and Metcalf, and a number of other cases. The same principles as were adopted by the Wholesale Grocers of this Country governed in these cases, either here or in England. The Courts said : " You have not violated the law, you have acted within not only the letter but the spirit of the law, and you shall not be punished for any of these things; they are not a violation of any statute of the land." And that is the position; that is how the matter stands.

ON BUSINESS INTEGRITY.

Let me say a few words in conclusion upon the matter of business integrity which is always important. As I pointed out in the beginning, general remarks are sometimes not valuable, general reasoning is not of great value to the people who hear it nor to the man who reasons. We have to get down to something like fixed, concrete principles, and see just where the generalities lead us to.

It is very well to say that the combination, or that the general conditions, or the exchange of trade, or whatever it may be, require certain general things to be done, but we ought to inquire first of all what are the real objects of such a combination or of such an association as this.

As I have worked it out in my own mind there are four things to be sought. Each one laudable, each one praiseworthy, each one something we ought to be proud of if we attain to. The first great object of an association of this kind, or of any guild, call it by what name you will, is to preserve the sanctity of an agreement. I care not what means you employ, I care not how hard it may press upon some people or their business; remember that one of the great things to be sought for by any aggregation of men, whether in trade or commerce, or in the private walks of

life, whether publicly, politically or otherwise,—the great thing is to preserve the sanctity of your agreements.

The second is, that in all organizations composed of honest men, doing an honest business, it is necessary to maintain loyalty to each other—no underhand dealing, no taking advantage in some concealed or surreptitious way, but that open, frank, outspoken loyalty, shown in words and in deeds; the confidence that one man must have in another, and in the loyalty which his fellows show to him and to the objects of the institution to which he belongs.

Considering the condition of matters, do not look upon your business as a mere money-making concern; because the man who spends his life gathering coppers together and storing them away and denying himself any little luxury he might otherwise have, that man is not pursuing the object of his life at all. That man is not living the life of a citizen. I say, therefore, that the third great cardinal principle is to look upon your business as a trust given to you to guard and watch and carefully protect.

In your hands lies the destiny to a great extent of a very large proportion of the trade and business of the Dominion of Canada, and as you carry on that business so you are stamping upon it the sacred character of a trust given into your hands; or by taking another course you will have the demerit of having abused the confidence that has been placed in your power.

The fourth is, that you should seek in all your regulations and all your rules to not only advance your own interests, which is the bounden duty of every man to do, but you should to the utmost extent protect the interests of your fellows in business.

Those four cardinal rules, take them as your charter, take them as the foundation of all proper, honest trade, and business, and you won't go far astray no matter what means you adopt to carry out those principles. By accepting these, you at once raise the moral standard of trade and business in this country. You elevate the tone and character not only of your business, but of the whole business of the community. By so doing, you purify the channels of commerce from one end of the country to the other, and even beyond the limits of this country. In your dealings with the English and German and American markets the same principles will hold good, no matter what the class of people may be you are dealing with. Purify the channels of commerce; you have nothing to dread and nothing to be ashamed of; and by these means you will become in fact as well as in name, the merchant princes of the land. Your own lives will be better and higher in their ideals by pursuing a course such as I have indicated; your citizenship will be loftier in its aims and purer in its objects, and your duty to the State will be more faithfully and more fully discharged. Private life is a reflex of our business

dealings. Do not run away with the idea, do not let any of us run away with the idea that we can be pure in private life and impure in our public transactions.

And let me say that as you improve the character of your public calling, so will your political, religious and moral conduct add to the national reputation and integrity of the great Commonwealth under whose broad banner of liberty and fraternity you live in the enjoyment of all the benefits and privileges of free, individual right of thought and action.

EXPLANATION

MR. E. F. B. JOHNSTON, K. C., was Counsel in the suit known as The Grocers' Guild Case. This was a suit brought by the Crown in 1906, under the Criminal Code, against the Wholesale Grocers' Guild of the Dominion of Canada, for conspiring in restraint of trade. A sweeping verdict in favor of the Guild was rendered by Sir Glenholme Falconbridge, C. J., on March 7th, 1910.

In the suit Mr. Johnston was ably assisted by Mr. E. H. Ambrose, of Mewburn & Ambrose, Hamilton, and Mr. E. N. Armour, of Bristol & Armour, Toronto.

THE RIGHTS OF THE TRADE AND
THE MANUFACTURERS

ADDRESS

BY E. F. B. JOHNSON, ESQ., K. C.

TO THE

DOMINION WHOLESALE GROCERS'
GUILD

AT ITS ANNUAL MEETING HELD IN TORONTO

FEBRUARY 12 and 13, 1912

ADDRESS

Mr. President and Gentlemen :

I regret very much that I was not able to be here last night, because one always feels more at home when he is eating than at any other time. I found, however, that I had to do a little work last night and get a few notes together, or you would not have had a speech from me to-day, as last night was the only opportunity for me to get together a few ideas.

The importance of the subject is so great that one feels a little delicacy in approaching it from what I may call a layman's standpoint, because after all as compared with the Wholesale Grocers I am only a layman and not possessed of that expert or practical knowledge which a man should have in dealing with any subject. The only expert knowledge which I have of the grocery business was in trying to keep some of our friends from being sent over the way, and I got a great deal of information on that occasion from what I saw of the iniquity of that prosecution and the iniquity of those charges that were made a few years ago.

The President has chosen the subject. I did not know really what the subject was until I saw in the newspapers that I was supposed to speak on "The Rights of the Trade and the Manufacturers." You will bear in mind that what I am about to say is not in the nature of an essay or a carefully studied out pamphlet upon the rights of the trade and the manufacturers, but it is more a collection of some thoughts that I have upon the subject than an elaborated statement, and I hope that it may suggest to your minds other lines of thought that may be of use to you in the course of your business.

I would like to make one or two observations of a general character. There are in all movements, whether it be the grocers, or whether it be the manufacturers, or whatsoever movement it is, underlying the whole scheme and the whole system, some principles which it is as well to consider having regard to the future. The underlying principles upon which the fabric must be built up must be of such a character that you secure a strong, solid foundation, so that, having spent a great deal of time and a great deal of money, you will not find the whole fabric tumbling to pieces.

These principles upon which I desire to make a few general observations are first, that the whole success of a body of men depends upon unity. I give you an example and I need not argue it

because it is apparent. The United States of America is a combination, a unity, and the Dominion of Canada is another. Unless there is unity between the various parts composing these two great countries the whole fabric must eventually fall to pieces, and all the work that has been done will be of no avail. You have a company composed of shareholders; the moment they begin to quarrel amongst themselves or to lose confidence in each other or in the directors or officers, and they begin to separate, that moment your company is doomed.

Workmen who unite together as against capital, perhaps against is not the proper word, but who are insisting upon what they believe to be their rights, realize that they need a union that must be strong and virile, and these men acknowledge a sovereign power, whether it is vested in the hands of one man or of an executive body is of no moment, they agree upon the principle of unity and as a result labour to-day is standing in a position in relation to capital in which she has never stood before, whether rightly or wrongly it is not for me to say, I am only using that for an illustration.

There is another thing, and that is continuity. The mere fact of your meeting once or twice a year, the mere fact that you come together to discuss propositions and to give more or less careful consideration to them is important, but if you have 360 days in which your thoughts are not concentrated upon working out the end and object of your body, then you will betray weakness in your institution, because without continuity no rights can be protected, no wrongs remedied.

Look what has been done by continuity of purpose in building the railroads of this continent against all obstacles; it is only by persistence that the greatest works are carried through. The process of continuous struggle and that alone, has given to you and me our civil and religious liberty, our rights and freedom, and all similar reforms have been carried out on the line of continuity of thought and action.

Another great rule is the subversion of the individual to the government of the body. No man is a good citizen or has attained to the highest object of citizenship unless he subjects his individualism to the wants and requirements of the State, and that must be so in the case where commercial interests are involved. Unless you faithfully follow the governing body the action of your body is weakened, and the efforts you put forth are less effective in accomplishing that which you set out to do.

Another strong underlying principle is that there should be, and I have no doubt there is in the case of all the gentlemen that are here, not only the full observance of business morality on their own part, but there should be also the desire to expose the want of business morality in any member, because the whole of this structure depends upon that, and any member may wreck the whole organization if he is allowed to go free and do as he pleases.

And another thing that I will deal with is that no organization ever succeeds in accomplishing anything worth talking about unless it is possessed of business courage: It may seem a very trite thing to say, but the failure in 90 per cent. of the business undertakings has been due to a drawing back through fear, the fear of consequences to personal possessions or friendships, when at the psychological moment, a little business courage would have carried you through and accomplished everything that you hoped for. That enters very largely into the success of all deliberative bodies who are seeking a practical objective point, such as you, gentlemen, are endeavoring to seek for in the Dominion Guild.

Now let us see how your rights arise from time to time, as far as we can in a speech of this nature.

You have the right fundamentally and by law to unite; you can form a union at any time and under any circumstances; you need have no fear in doing so if you bear in mind that the union, and the terms and conditions of it, are reasonably necessary for self protection. You see the difference at once, but let me illustrate it in this way. Suppose you have a body of men combining together for the purpose of raising sugar from 5 cents to 7 cents a pound, without any other object in view; that is a conspiracy against trade and is illegal. But if it is necessary to the existence of the grocery trade of this country whether for one or half a dozen articles, that you should raise the prices:—first, for a fair profit having regard to the nature of the business,—second, with a view to increase the trade,—third, if it is in the best interests of the trade,—although the same result follows, a different principle is acted upon, and although you increase the price of an article you are not guilty of any wrong doing because the law justifies all unions or combinations that have for their object the self protection of the members of them and of the trade throughout the country.

That is the first general step that we have to consider in dealing with a matter of this kind. Some one has said that law is only common sense and justice, and when it fails to be that, it must be reformed, and it is a good principle of business to see that the law that we follow is common sense and justice, and to see that it should be the law of the land instead of something that is perverse and injurious.

These are conditions that you may attach to a combination of that kind, but you must see that they are reasonable conditions having in view the good of the trade, even if they do result in advancing prices; you must not combine entirely for the purpose of raising prices, unless in addition there is some other ground for getting a larger profit than the mere making of money.

Combines are not illegal on that basis until they unduly enhance the price of goods, or unless they limit competition, or unless they

do certain things that are not in the interests of the trade and are not necessary to the existence of the trade of the individuals concerned.

You have always to bear in mind that there is absolute liberty to combine so long as the combination does not touch upon some of the provisions contained in the statute relating to conspiracy against trade. You will understand that better when I point out, that although the results may be precisely the same, the motive is entirely different; the one is for enhancing the value of the goods without any necessity therefor, the other does the same thing, but because it is in the interests of the trade and of the country it is not illegal.

In order to understand how this matter appeals through me to you we may further consider this particular phase of it in order that you may more fully appreciate what I have to say. Trade is not a law, nor is it a contract, nor is it a principle, nor is it anything that you can express as a fact. Trade is a condition; it is the evolution or outcome of certain conditions which have resulted from development in your manufacturer, in your wholesaler, and in your retailer, in your agents, your lines of credit, and all the rest of it. Your whole fabric of trade is practically a condition of things. Trade began with the man who traded a horse for a cow, who exchanged some things that he did not want for some things that he did; it has advanced from the ordinary packman of the villages, to the large warehouses of towns and cities and the great commercial centres, and as in all cases we become specialists, so the trade that we have now has grown out of and developed a condition of things which you have got to deal with entirely upon that basis. What was good trading 20, 30 or 40 years ago may be absolutely bad to-day. Once it was governed by natural laws, now it is governed by the laws of exchange throughout the world. That being so, you are justified in doing what you can to create a new system of trade or business as you become convinced of the necessity and importance of doing certain things in a different way, seeking to improve conditions so as to suit the altered conception of trade rather than let things go on as they are. It may be that in 50 years your business will be of a kind that will be altogether different from the system of distribution that is in use to-day; conditions will have changed, and in order to carry on your trade successfully it is necessary that your method should be improved to correspond with inevitable changes. The law says that if that is the object of your combination it is not illegal and not punishable. You have to meet varying and changing conditions, what was good twenty-five years ago may be absolutely bad to-day. You have to be on the alert to meet these changed conditions in order that you do not suffer and in order that the consumer does not suffer likewise.

Another thing that you have a right to do, and that is you have the right of co-operation; it does not matter much what you call

it; you can say it is conspiracy if you will. The liberty of co-operation is allowed to workmen in a factory and it simply means that these men are joined together with certain lawful purposes in view, and thus joined, can accomplish a great deal more than they can individually. Let us see what you are doing, I want to encourage you if I can. You have the right to co-operate for the purpose of economy; you have the right to co-operate for greater facilities for your own business, and you have a right to co-operate for your individual safety and for the general protection of the whole body of wholesale grocers in Canada. These are rights that you have, and there can be no question as to how far these rights go, and within these limits your business can be carried on without any violation of the law. You have the right to improve the terms of your trade without violating the law; if you can make any arrangements by which you will profit and which will not be unreasonable you will be perfectly justified in making these arrangements. As a matter of law and of right you are protected in making your terms more profitable to yourselves, but in doing so, bear in mind that they must be reasonable and necessary in your business, and the moment that this is shown, you are beyond the scope of the law as regards combinations and conspiracies.

It has been said, and truly said, that you are the agents of the manufacturers, in fact, if not in law; that is, no matter how you put it, whether you buy the goods outright or take them on agency terms, or whether you pay the money yourselves or not; the principle involved in that of principal and agent as between the manufacturers and the wholesale trade. What, then, is the position? I think that the position of the wholesale grocery trade has been grossly misunderstood by the public and by people who think they know a good deal more about it than they do. It is as much to your interest as it is to the interest of the consumer that the product should be at the cheapest possible rate. The profit does not depend upon the cheapness; the enlargement of the consuming class, which is always a benefit to the dealer, depends very largely upon the cheapness. Many of your profits are determined by a fixed price, it is therefore to your interest that the goods should reach the consumer as cheaply as possible. That being so, a fair profit is necessary, and that you are entitled to have. The conditions, it is true, must also be reasonable, and in justifying the reasonableness of the conditions, bear this in mind; we are sometimes told that certain goods are sold in New York for so much and the same goods in London, England, for so much, and you are selling them for half as much again; that is not the test. The question is, do the prices of these goods enable the manufacturer to have a fair, living profit; if they do not, the conditions should be amended. You say that the price of these goods that you are selling for \$5 should be \$6, and that would give you a living profit, and although it adds to the cost of the goods, so long as it does not do more than give you a living profit by increasing the price you are not infringing the law. See that you apply that

test in dealing with your arrangements. That is the point that you will be called upon to explain, if ever you are brought to court for an explanation.

While I was thinking over what I would say to you to-day I saw by this morning's paper what His Worship the Mayor told you yesterday; I think quite the same as he does upon this point. It is alleged that by reason of trusts and combines the increase in the cost of goods is too much, and that by reason of your conduct and the conduct of other men, the expense of living has increased entirely too much, and they say that is due to trusts, conspiracies and combinations, and so on. Let me ask you this question, which seems to me to be a vital, crucial question. I would like you to go back twenty-five years ago and I ask you if you made as much money in the last five years as you made in any five years a quarter of a century ago? Your business had the same living profit and the goods were cheaper than they are now; that is not due to the fact that your profit is increased. The cause is to be looked for elsewhere. Take, for instance, the cost of land; before a man can make land profitable, he has to charge enormous rents; the clerk who formerly paid \$15 or \$16 rent per month now pays \$28, \$30 and \$35 a month; obviously the increased cost of living is not due to the fact that he pays a little more for his sugar and a little more for his tea.

The increased wants of the people also have increased the cost of living. The man who is your traveller could live very luxuriously some years ago on 60 per cent. of what it costs him now; he used to go to the theatre for 50 or 75 cents; now he pays as high as \$2.50. He cannot travel, he cannot go from one place to another, he cannot hire a horse unless he pays nearly double what he would have had to pay twenty years ago. Everything has increased, his luxuries, his increased wants of every nature, his hotel bills, even his dress, his method of dress, and so forth. What is the result of all this? The result is that wages are a great deal higher, must be a great deal higher to enable people to live; and it is the wages end of it that interests you directly, for you have to include that in deciding on what you require as a living profit on your goods. You see that necessarily all these things result in increasing the cost of an article, and unfortunately groceries are not exempt from the operation of these causes. I have been told that you are selling staples such as sugar, tobacco, tea, at a less margin than it has ever been done before, and general articles, like brooms and pails and so on, at a margin that would not keep your heads above water; you know of course, whether that is so or not.

If you could eliminate the increased cost of land and houses, which has permeated everything, if you could eliminate the increased cost of man's personal needs, if you could limit the desires of humanity, so that it would be content with lower wages, then it

is possible that you might have cheaper goods and larger profits. That is the way it occurs to me from a purely economic standpoint and you will know to what extent the facts bear me out in that.

There is another thing that I may suggest to you. The day was when you and I would be quite content to wear the fulled cloth tweed that was produced by the hand looms, and by native production. That cost 25 to 35 cents a yard; now we must have our worsteds and chevots and meltons at \$1.50 to \$3.00 a yard and we must have it made by a tailor, who charges us from \$12 to \$25 a suit more than it originally cost us. That means, if we must have it, that we have to pay high wages by reason of this generous living which is the rule in all civilized countries at the present moment.

I would like to say a few words not only as between yourselves, but as between yourselves and the manufacturers. If you are to be successful you must exhibit the greatest good faith towards each other and to the manufacturers. You are not at one with the manufacturers, I mean, that your interests are not identical with theirs. I think it is just as well that we have nothing to do with the manufacturers, beyond the fact that we are willing to carry out all reasonable contracts. We can say to them that we are not going to submit to a condition of things if by means of a policy of protection, profits are going to be increased to them and not be increased to us. The utmost good faith must be exercised between the members of this guild and between this guild and the manufacturers. I do not mean that a man should be merely honest in his dealings with other men, because most people are honest, but you will have in all combinations or unions, no matter what they are, violators, you will have traitors, men who will not stand up either to the letter or the spirit of the law, even the law that they have made unto themselves. You will find that at least 99 people out of every hundred will endeavor to carry out their agreements and undertakings, but you will find one man, perhaps a manufacturer, who in spite of the guild and in violation of a moral and contractual obligation, will sell to your customer at the same price as he will sell to you. Better have only fifty true men belonging to your Guild, than to have five hundred with one traitor amongst them. The man who breaks his agreement is a man that you cannot trust. I am not saying that they are plentiful, though I have had one or two instances in which I found dealers who were breakers of contracts. The manufacturers who transgressed were making everything for themselves and sacrificing the rest of the community as well as the interests of their fellow manufacturers. The manufacturer is false to his trust if in violation of an agreement he sells to a retailer or allows a discount which he has agreed not to allow, thus practically defrauding the wholesaler.

Let me illustrate still further. What would you think of allowing a conveyancer to issue writs and practice law under some other name; and in competition with, say myself, without spending the time and money in acquiring the knowledge necessary to carry on the business of law? This man is taking away my business and destroying my earning power; surely that would not be fair. The legal profession is the most exclusive profession in the world. There, no man but a lawyer shall be allowed inside a court room to plead, no man but a lawyer can issue a writ unless he does it in person, seeking a remedy for his own wrong, which is a civil liberty you cannot deprive him of. We protect the professional man from first to last; that is what is done in the law. We come into the grocery trade and we find that there is the same reasonable necessity for this protection, and up to the limit that is necessary we find that the law recognizes these rights, just the same as it does in my profession or in every other profession. The law does not create a monopoly, of course, but it permits it to a limited extent, but so far as you are concerned, you won't get greater protection unless you are inspired and actuated by unity of purpose and continuity of action.

Bear in mind also that it is desirable that whatever system you adopt, whatever conditions you may think proper to attach, the necessity for honestly carrying out these must be apparent and this may be illustrated in a very simple way. The balance must be maintained somewhere, the scales must weigh fairly with the Guild and with the manufacturers and with the Courts. There must be no iniquity whatever on the part of individual members in the system you adopt; it must be done with a view that the interests of all the members shall balance each other. You have a machine perfect in all its parts and complicated in a very wonderful way to such an extent that the ordinary man would not understand its operation, and could not put it together if it was taken apart; you have that machine running smoothly and you break a cog, and the result is that in a week or two weeks, or a month, the whole machine is a wreck. And so here, if one individual member gets away from the rest and interferes with the smoothly running processes of your organization, you may look forward to that trouble spreading and affecting other parts of the machine, and the result will be that the whole machine will go to pieces or become utterly useless.

This being the fact, I think it is as well that we should understand the fundamental elements of these things. The inter-dependent relation in business is easily accounted for when we consider where we are at in trade or commerce. A man begins his trade as a unit in early times, he began with something of his own production, he started in his work-shop and he turned out the finished product. Demands got greater, population increased, with the result that the undertaking grew until you have the large business, the large system, the large factory, and although that system is

composed of individual units, remember than no one of these units can now exist separately, so he is dependent upon 999 other men for the purpose of producing the finished product that will realize money on the market. The producer may lose one man; he must supply his place for the simple reason that each one is a part of the organization, and the result is that any such action stops the machinery. Twenty men will stop a large factory, because each one is dependent upon the other and because in the modern idea of organization the single man has been lost sight of.

I wish to say a few words with reference to your relations to the manufacturers in a more concrete way than I have so far done. Let us see just where you are at with the producer. You want a profit, a handling profit on the goods, you must have it or you cannot live. You want not only a handling profit but you want a margin of profit for losses, interest and discounts, and all that sort of thing. You want in addition to that another important element, and that is a margin of safety for the future, reasonable provision, as it were, for your business future and for your family. That is the position that you stand in with regard to the finished product.

The manufacturer too wants not only these things, but he wants the highest price he can get for the finished product. You can only get that finished product from the manufacturer, and if it was not for the fact of competition that product would be perhaps double what it is to-day. Your interests therefore are not those of the manufacturer in regard to the handling of the goods themselves. It is more in the interests of the manufacturers than in your interest that you should handle their goods. Whilst that is so you will bear in mind that a combination of interests, that is, where the manufacturer by a secret understanding can charge what he pleases, and you enter into an arrangement whereby you get an excessive profit, that moment you are on dangerous ground, and you can be punished for an offence under the Criminal Code. There must be absolute separation, no collusion, no combination. The manufacturers' interest must be to get the highest price for his product and procure the distribution of it with the lowest possible commission, or rebate, or remuneration.

You stand between the manufacturer and his ultimate consumer; and you have a perfect right to say what amount you want for handling these goods. If competition is going to destroy your business so that you cannot afford a fair living profit as well as the margin necessary for the cost of handling, then it is time for an adjustment between these two classes. I have never seen any objection to a fair, frank open discussion between the grocers and the sugar men and the tobacco men on all these things, because the manufacturer ought to know from you your wants and you ought to know from the manufacturer his necessities, with the result that without forming any combination, prices would be

fixed upon by the producers and a rate of profit arrived at that would be consistent with intelligent business methods, instead of building upon arbitrary figures, in which you cannot possibly agree with the manufacturer, so far as your interests are concerned. You want better quality than the quality you have been getting, and at the same price and at the same rate of discount, and that advantage comes out of the manufacturer. There again you are in conflict; there again your interests are diametrically opposed. In order to get to a fair understanding it would be a good thing if the manufacturers could be enlightened, in arriving at some agreement, and if two or three practical men were to see these manufacturers, and lay before them exactly your position, perhaps a great deal of good results would follow. Of course I understand that it might be fruitless to approach the manufacturer in regard to fixing prices; but there is no reason why discussion should not take place with these gentlemen, so long as the law is not violated by hard and fast cost prices and profits. There is no objection whatever to this, either in justice or law.

The manufacturer makes the goods, you are the distributors, and I suppose in a sense the manufacturer has at his back what you have not got, in fact, what you have to contend against, and that is, that the bulk of the manufacturers have a combination by way of a protective tariff. I am not objecting to that, nor introducing any question of politics, but the manufacturers have a tariff which benefits them by keeping out competition from the outside world and limiting the competition in our own country.

You have no protection such as that, you have to carry a large stock of goods at advanced protective prices which always means a loss to the distributor. If you could carry on your business with an investment of \$100,000 instead of an investment of \$150,000 you are just ahead the interest on that \$50,000, and so your interests are not identical with those of the manufacturers. Our interests as citizens of this country are all centred upon progress, upon the commercial and political advancement of Canada as a whole, but there are conditions arising that require adjustment, and it is the adjustment of these matters, by taking fair views of things that men like you must do a great deal of good in advancing the trade and commerce and in the development of Canada.

You have a legal ground to insist upon your rights, not because it is in the interests of anybody else, but because it is in your own interests and you have a right to protect them. Take, for instance, the matter of transportation alone, see what has been done in the way of transportation, see the terms that the wholesale men have made, and perhaps the manufacturers as well. You are not done with the question yet, there should be an effort made day by day and from time to time to ameliorate conditions, so that it would not be necessary to have that admirable scheme

which is due very largely to my friend Mr. Beckett, the equalized rates system. There should have been no occasion for that, but the gross inequality was there and you had to meet it with a remedy. You have to pay for your profits or you don't get any; you pay a man \$5 for an article and the rebate representing your profit is 50 cents, you have to pay for the article and you have to wait until you sell it until you get back your money representing both capital and profit; you have no control over that condition. You cannot make any terms that will help you without increase in price to the retailer, your hands are tied by reason of the fact that you do not get a margin of profit sufficient to enable you to equalize matters at a fixed rate, although perhaps you get a certain reduction by buying in quantities at certain times.

You have to carry immense stocks of goods, you have to take the incidental risks, you have to take the whole output of all the manufacturers in this country. It is not the banks, it is not the capitalists who really assume these risks. You have got to assume the whole load of carrying that at your own risk and on your own responsibility, and instead of having it in the hands of a few men easily dealt with, you have it in the hands of a thousand people, many of whom are not worth a dollar, that is the position you are in, and it calls for grave consideration and protection, and any remedy that would be at all commensurate with these conditions would be a provision that would be in the interests of your business, and would be quite lawful.

Again, I note here a subject which your worthy President has dealt with, and that is the settlement of disputes arising out of these conditions by Commission. We have three great railways here representing millions upon millions, extending from one end of the country to the other, upon them the success of the trade of the country more or less depends. You have on the one hand the demands of the manufacturers and on the other the demands of the retailers and consumers; you have elements of trouble in the grocery business that many other businesses do not have, and you have no way of settling your disputes, except by setting up that you are not liable, and then the courts say that you are guilty anyway. The railways have a Board. This Board has absolute control over almost everything connected with the three great railways of this country. This Board deals with matters in a practical business way. They do not deal with them as lawyers or judges; they deal with them as business men; there is a dispute now as to whether York street shall be opened or closed, The city and the Board of Trade seem to have one view, the railways seem to have another; but if the Board say it shall not be closed, there is an end of it.

You have not such a tribunal as that in your business. If you had a Board or a Commission that could determine all the matters that might be raised, you would have no difficulty at all in settling

these matters. Here, we will say, is a man who is claiming to get goods at a reduced rate, he says he is a wholesale dealer and that he is entitled to some special privilege, what tribunal have we got that is able to settle that? There is no way in the world except by criminal prosecution and yet that is a question that has often arisen in your body. Questions as to whether or not you can make a certain agreement with the manufacturers, how far in that agreement you may go, to what extent your Association depends upon that particular thing? You are all interested, and the only way that you can decide that question is for one of you to become a theoretic criminal and take his place in the dock. The only place that you can have a grievance of that kind tried is in the criminal court, instead of in the civil. You can do a great deal to remedy this by promoting a change in the law. You can, it is true, do it by contracts to some extent, that is, the extent to which an honest man will be bound by a contract; you can do it partially by the by-laws of your Guild.

You can to some extent do it by governing and disciplining your members, you can deal with it by legal proceedings to some extent, you can govern the conduct of your members through their admission to membership and by their expulsion from your body in the case of a violation of your rules, but you will be still hampered by the fact that there is no proper efficient tribunal by which you can determine these things, in a final and satisfactory manner.

The Commission should be a body able to afford the same kind of protection and relief that the railway people have in regard to railways, for if it were not for you, the railways would not have very much to do. If there was no one to handle goods and distribute them, we would be back living on the farm, under the primitive conditions of 60 or 70 years ago.

I did desire to say something on the proposed remedy contained in the Statute book of 1910. It was doubtless passed with a view of remedying the anomalous condition in which we find the law respecting combines. In 1910 we had an act called the Combines Investigation Act passed. I think the Act must have been hewn out of a block of wood with a broad-axe, it is in such a condition that I do not see how it can be enforced. I am free to say that when an Act of that kind passed through the House it must have been when the members were either absent or asleep.

I called attention to this matter at that time and we had some communication on behalf of the retail people. I pointed out some difficulties in the way, but not being in the inner temple, I suppose my views were looked upon as the views of a hireling, instead of the views of a man who desired to see a law on the statute book fairly put and honestly thought out, and which might be expected to furnish the remedy required.

In the Combines Investigation Act you are placed in this position. If you are accused you are hauled before a judge and he finds out whether there is anything the matter with your methods or not, and if there is he sends you on to a so-called Board of Investigation; you are tried there upon a certain state of facts, and a notice is put in the Gazette, and ten days after that if you go in your sinful way, you might be fined \$1,000 a day, the penalty being from \$200 up to \$1,000. This is by reason of the fact that you have been found guilty of conspiracy under the Combines Investigation Act, which is supposed to be a remedy. But there is a second tribunal. Some active County Attorney primed to bursting with the interests of his country finds that you gentlemen have been guilty of conspiracy, he prepares his brief and gets his witnesses, he goes to the High Court of Justice and he presents exactly the same facts, the same case, the same charge and with the same witnesses, and the judge, or the judge and the jury, may acquit you of the charge made against you. The other tribunal may do exactly the opposite, and you have the wonderful spectacle of \$1,000 a day penalty being collected on a charge of which you have been acquitted. Two tribunals trying the same man for the same offence with a penalty of \$1,000 a day on the one hand and a different penalty on the other, and you are lucky if you escape both. This state of the law I say is an outrage, I say it is a disgrace to the country.

In the one case under The Combines Investigation Act, when they make their pronouncement you are done for, you have to take your gruel as it is administered, you have no appeal. When you are tried before a judge and a jury, if there is anything wrong in your trial, any irregularity, you have the right to appeal to the Court of Appeal, the highest court in the Province of Ontario. When the gentlemen who complain of violations decide that they must proceed with the investigation under the Combines Investigation Act, they find they have great advantages. They are entitled to have a lawyer skilled in evidence and in the examination of witnesses and in the presentation of the case; but the men who are charged have no right to be heard and they are not entitled as of right to have a lawyer present to look after their interests. You have these gentlemen sitting to try this case and you go there and the complainant is entitled to have his lawyer, and he appears there and you are compelled to go into the box and explain your methods, you are compelled even to testify against yourself, and the complainant's lawyer examines you and cross examines you, and you cannot have a lawyer except by permission of the Board, he is not entitled to be there as a matter of right, but only through the courtesy of the Board. If malicious people prefer a charge against you under the Combines Investigation Act, it will come up in this unfair way before the Board for trial, and you have not a single shred of protection if the proceedings are instituted from a malicious standpoint. These

men can go ahead with their prosecution. They get their railway fare and expenses paid, and although their action may be absolutely groundless and malicious, yet there is no provision to make them responsible for a dollar, they are not even liable for costs. I think the last action of this kind cost, Mr. Blain, \$10,000 or \$12,000? Mr. Blain—\$20,000. Worse even than I thought. There is not a single way of punishing these men in the event of their doing anything which they ought not to do, they get their expenses and they get help in every way, thus simply putting a premium on stirring up strife.

There are three or four meanings in the Act given to the word "combine." One of these is that any combination which has the effect of enhancing prices no matter how righteous or proper or necessary it may be, any combination that has that result is improper. But under other clauses if there is any agreement, any understanding, which has the effect of increasing prices, it must be injurious to the country's trade, it must unduly add to the price of these various things, so that you have in the one act three or four meanings to the word "combine." So that if you enhance the value, but not unduly, not unreasonably, you are all right in one case and wrong in another, and by the time you get through you find that the word "combine" covers four or five different contradictory elements. Surely something ought to be done with a view to meeting this difficulty. This is a matter that should appeal to the Parliament of this country and would appeal to any sensible man. I do not expect for a moment that you will get a full remedy, but you will get it eventually if you keep at it. If you do not keep at it, you can wager all you are worth to-day and all you ever expect to be worth that you won't get it. Under this precious Act they can tie up your business, they can seize your books, and put you out of business practically for weeks and months, and they are not called upon to assume any responsibility whatever. If Parliament would only say that the whole cost of the prosecution should fall upon the instigators if there was no valid ground for the prosecution, as is the ordinary rule, it would not be so unjust. If I go to law with my neighbor and if I fail, I have to pay his costs as well as my own, but in this case, if the complainant fails, he not only gets a certain amount paid over to him, but he does not have to pay a cent.

I say that any act which affects the rights of trade and commerce ought to be as clear and plain as the injunctions of the moral law,—“thou shalt not kill”—so that the man that runs may read, so that there may be no difficulty whatever in understanding it in its fullest application. This is another matter to which attention ought to be directed with a view to making these things absolutely clear and plain and simple and at the same time protect those who are endeavoring to carry on an honest business.

What I have said to you is largely a matter of suggestion as it is not for me to decide on your business or to discuss the re-

lations which one part bears to another. My views on some of these relations may not be agreeable to some of your views. At the same time if you do not get the honest opinion of the man who is addressing you, you are better without him. If anything that I have said leads to consultation and discussion of these matters, I will feel that I have not taken up your time and my own in vain in thinking out what I had to say to you to-day.

I think that fear of prosecution, fear of enforcing discipline, fear of punishing failure to observe the rules governing your body is the very worst thing that can happen to you. There should not be any doubt that after having determined what is right, you should go ahead and do it. You must take these matters in a firm grip and you must have courage to carry out the rules of your order, and in so doing, do justice to yourselves and to your associates. If you think that there can be any doubt, if you think that by adopting a certain rule anybody may suffer, then provide a remedy at once, but to allow your own idea to defeat the general good is wrong and disloyal to the Guild. Remember that the man who makes himself subservient to the State and to good government and discipline is a better citizen, a better wholesale grocer, than the man who refuses to obey.

